

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



ISSUE DATE: December 11, 2018

CASE NO(S): PL171016

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 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Valery Homes Paris Limited
Subject:	Application to amend Zoning By-law No. 110-01 - Refusal or neglect of the County of Brant to make a decision
Existing Zoning:	Agricultural Restrictive (AR)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development of 230 single detached dwellings and 64 street townhomes
Property Address/Description:	848 Watt's Pond Road
Municipality:	County of Brant
Municipality File No.:	ZBA13/15/MD
LPAT Case No.:	PL171016
LPAT File No.:	PL171016
LPAT Case Name:	Valery Homes Paris Limited v. Brant (County)

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

Applicant and Appellant:	Valery Homes Paris Limited
Subject:	Proposed Plan of Subdivision - Failure of the County of Brant to make a decision
Purpose:	To permit the development of 230 single detached dwellings and 64 street townhomes
Property Address/Description:	848 Watt's Pond Road
Municipality:	County of Brant
Municipality File No.:	PS1/15/MD
LPAT Case No.:	PL171016

LPAT File No.: PL171017

Heard: December 3, 2018 by telephone conference call

APPEARANCES:

Parties

Counsel

Valery Homes Paris Limited

Joel Farber

County of Brant

Jyoti Zuidema

Brookfield Homes (Ontario) Limited

Alex Lusty

DECISION DELIVERED BY PAULA BOUTIS AND PROCEDURAL ORDER OF THE TRIBUNAL

[1] This matter returned for a second Pre-hearing Conference (“PHC”). A second PHC was scheduled to allow for the completion of the processing of the applications for a proposed zoning by-law amendment and proposed plan of subdivision and to explore potential resolution between the parties.

[2] The parties were unable to achieve a framework for settlement. As a result, a draft Procedural Order (“Draft P.O.”) was presented to the Tribunal to allow for the scheduling of hearing dates.

[3] Ten days have been set aside for the hearing of this matter. The hearing will commence on **Monday, March 9, 2020 at 10 a.m. at:**

**County of Brant
Council Chambers, Municipal Building
7 Broadway Street West, Paris
Brant, ON**

[4] In accordance with those dates, the Draft P.O. has now been finalized and

reviewed by the Tribunal. The final Procedural Order is appended to this decision as Attachment 1.

[5] The Tribunal notes for the participants that they are required under item 9 of the Procedural Order to provide to the Tribunal and the parties a participant statement at least 30 calendar days before the hearing.

“Paula Boutis”

PAULA BOUTIS
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 Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1



Local Planning Appeal Tribunal **Procedural Order**

ISSUE DATE:

CASE NO(S). PL171016

PROCEEDING COMMENDED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant(s)/Appellant(s): Valery Homes Paris Limited
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1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on **March 9, 2020 at 10 a.m.** at the **County of Brant Municipal Offices, 7 Broadway Street West, Paris** in the County of Brant.

3. The length of the hearing will be about **10 days**.

4. The parties and participants with contact information identified at the prehearing conference are as follows:

Parties:

Valery Homes Paris Limited (Appellant)

c/o Mr. Joel Farber, Counsel

Fogler, Rubinoff LLP
77 King Street West Suite 3000, P.O. Box 95
TD Centre North Tower Toronto, ON M5K 1G8
Direct: 416.365.3707 Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: jfarber@foglers.com

County of Brant

c/o Ms. Jyoti V. Zuidema, Solicitor & Corporate Counsel

26 Park Ave., P.O. Box 160,
Burford, ON N0E 1A0
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TF: [1.888.250.2295](tel:1.888.250.2295)
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Brookfield Homes (Ontario) Limited

c/o Mr. Alex Lusty, Counsel

Davies Howe LLP
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario M5V 3C1
416.977.7088
Email: AlexL@davieshowe.com

Participants:

1486563 Ontario Inc.

c/o Mr. Gideon Bell, Counsel

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Phone: 905-574-3300
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Email: gbell@dcalawyers.com

Susan Desroches

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Mary Taylor

Email: maryt1@rogers.com

The order of evidence is set out in "Attachment 3"

5. The Issues are: See Issues List Attached as "Attachment #2"

There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered at least 90 calendar days before the hearing.

8. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 11. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.

9. A witness or participant must provide to the Tribunal and the parties a witness or participant statement at least 30 calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

10. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section 11.

11. On or before **February 7, 2020**, the parties shall provide copies of their expert witness statements to the other parties.

12. On or before **March 2, 2020**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

13. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.

14. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.

(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)

15. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.

16. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

17. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is not seized.

So orders the Tribunal.

BEFORE:

Name of Member)
)
)
)

Date:

TRIBUNAL REGISTRAR

ATTACHMENT #1

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at www.elto.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness'

opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Tribunal;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Tribunal.

ATTACHMENT 2

Issues List

Note: Any Party may call or not call evidence on any issue; however, no Party is obligated to call evidence on any particular issue or every issue.

PLANNING ISSUES:

Provincial Policy and Public Interest

1. Is the proposal consistent with the Provincial Policy Statement (2014), specifically with relation to:
 - (a) Sections 1.1 (Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns);
 - (b) 1.2 (Coordination);
 - (c) 1.4 (Housing);
 - (d) 1.6 (Infrastructure and Public Service Facilities);
 - (e) 1.7 (Long-Term Economic Prosperity)
 - (f) 2.1 (Natural Heritage);
 - (g) 2.2 (Water); and
 - (h) 2.6 (Cultural Heritage and Archaeology).
2. Do the applications conform to the parallel provisions of the Growth Plan for the Greater Golden Horseshoe?
3. Is the development proposal in the public interest and represent good and proper planning?

County of Brant Official Plan

4. Do the proposed applications conform to the County of Brant Official Plan, specifically with relation to:
 - (a) Sections 1.9 (Purpose of the Official Plan);
 - (b) 1.11 (Basis of the Plan);
 - (c) 2.2.3 (Community Structure);
 - (d) 2.7 (General Development Policies)

- (e) 3.4 (Urban Residential);
- (f) 5.2 (Servicing Systems);
- (g) 5.3 (Transportation Systems); and
- (h) 6.6 (Plans of Subdivision/Condominium)

Plan of Subdivision – Pursuant to ss. 51(24) of the *Planning Act*

5. Does the proposed draft plan of subdivision have appropriate regard to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,
- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;
 - (b) whether the proposed subdivision is premature or in the public interest;
 - (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
 - (d) the suitability of the land for the purposes for which it is to be subdivided;
 - (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
 - (f) the dimensions and shapes of the proposed lots;
 - (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
 - (h) conservation of natural resources and flood control;
 - (i) the adequacy of utilities and municipal services;
 - (j) the adequacy of school sites;
 - (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
 - (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land.

Draft Plan Conditions

- 6. Are the proposed draft plan conditions appropriate?
- 7. Do the conditions of draft plan approval appropriately provide for repayment by Valery Homes of its proportionate share of costs which have been incurred by others in facilitating the development of the Subject Land?
- 8. Are the applications premature until proof of a cost-sharing arrangement between all the parties involved with the North West Paris Area Study have been provided, and all parties are satisfied?

Zoning By Law

- 9. Does the proposed zoning by-law conform to the County of Brant Official Plan?
- 10. Is the proposed zoning by-law consistent with the 2014 Provincial Policy Statement and in conformity with the Growth Plan for the Greater Golden Horseshoe?
- 11. Is the proposed draft zoning by-law represent good planning and is in the public interest?

TRAFFIC ISSUES:

- 12. Are the applications premature in advance of the findings of the currently ongoing Class Environmental Assessment for the Grand River Street North corridor?
- 13. Are the applications premature in advance of the implementation of the ongoing Class Environmental Assessment for the Grand River Street North corridor?

SERVICING ISSUES:

- 14. Are the applications premature as the necessary infrastructure to service the proposed development could be at least a decade away? (Specifically water

availability, sanitary sewer installation and road improvements to the applicable municipal road system.)

15. Do the revised drawings address modifications to the Storm Water Management Pond Block as requested by the County of Brant?
16. Does the updated Functional Servicing Report provide additional information as requested by the County of Brant?

ATTACHMENT 3
Order of Evidence

1. County of Brant – Overview Factual Non-Opinion Evidence
2. Valery Homes – Case in Chief
3. Brookfield Homes – Response Case
4. County of Brant – Response Case
5. Participants – at the convenience of the Tribunal
6. Valery Homes – Reply Case
7. Final Argument