

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



ISSUE DATE: November 02, 2018

CASE NO(S):

PL171169
PL180649

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 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	2517015 Ontario Inc. (Format Group Inc.)
Subject:	Request to amend the Official Plan - Failure of the City of Mississauga to adopt the requested amendment
Existing Designation:	Low Density 1
Proposed Designated:	Low Density II and Special Site policy
Purpose:	To permit 2 detached dwellings units, 6 semi-detached dwelling units and 6 townhouse dwelling units.
Property Address/Description:	1190 & 1200 Lorne Park Road
Municipality:	City of Mississauga
Approval Authority File No.:	OZ 16/014 WZ
OMB Case No.:	PL171169
OMB File No.:	PL171169
OMB Case Name:	2517015 Ontario Inc. (Format Group Inc.) v. Mississauga (City)

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

Applicant and Appellant:	2517015 Ontario Inc. (Format Group Inc.)
Subject:	Application to amend Zoning By-law No.0225-2007 - Refusal or neglect of the City of Mississauga to make a decision
Existing Zoning:	R2-4
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit 2 detached dwellings units, 6 semi-

Property Address/Description: detached dwelling units and 6 townhouse dwelling units.
 1190 & 1200 Lorne Park Road
 Municipality: City of Mississauga
 Municipality File No.: OZ 16/014 W2
 OMB Case No.: PL171169
 OMB File No.: PL171170

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

Appellant: Tim Connelly and Ruth Connelly
 Applicant: 2517015 Ontario Inc. (Format Group Inc.)
 Subject: Consent
 Property Address/Description: 1190-1200 Lorne Park Road
 Municipality: City of Mississauga
 Municipal File No.: B038/18
 LPAT Case No.: PL180649
 LPAT File No.: PL180649
 LPAT Case Name: Connelly v. Mississauga (City)

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

Appellant: Tim Connelly and Ruth Connelly
 Applicant: 2517015 Ontario Inc. (Format Group Inc.)
 Subject: Consent
 Property Address/Description: 1190-1200 Lorne Park Road
 Municipality: City of Mississauga
 Municipal File No.: B39/18
 LPAT Case No.: PL180649
 LPAT File No.: PL180650

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

Appellant: Tim Connelly and Ruth Connelly
 Applicant: 2517015 Ontario Inc. (Format Group Inc.)
 Subject: Consent
 Property Address/Description: 1190-1200 Lorne Park Road
 Municipality: City of Mississauga
 Municipal File No.: B40/18
 LPAT Case No.: PL180649
 LPAT File No.: PL180651

PROCEEDING COMMENCED UNDER subsection 12(1) of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, and Rule 9.01 of the Tribunal's Rules of Practice and Procedure

Request by: City of Mississauga , Tim and Ruth Connelly,
Andrew Davies
Request for: Request for Directions

Heard: In writing and by telephone conference call on
October 18, 2018

APPEARANCES:

Parties

Counsel

2517015 Ontario Inc. (Format Group
Inc.)

Ira Kagan and Kristie Jennings

City of Mississauga

Rajan Kehar

Tim and Ruth Connelly
Andrew Davies

Ian Flett

DECISION DELIVERED BY PAULA BOUTIS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Following the second Pre-hearing Conference for Case File No. PL171169, the Local Planning Appeal Tribunal ("Tribunal") heard, in writing and by telephone conference call ("TCC"), a joint motion by the City of Mississauga ("City"), Tim and Ruth Connelly, Andrew Davies (collectively, the "Moving Parties") to have Case File No. PL180649 consolidated with or, in the alternative heard together with, Case File No. PL171169. Format Group Inc. is the Applicant/Respondent in the motion and opposed the motion to consolidate.

[2] PL171169 relates to official plan amendment ("OPA") and zoning by-law amendment ("ZBLA") appeals ("Legacy Appeals") for property located at 1190 and 1200

Lorne Park Road (“Subject Site”). These Legacy Appeals are subject to pre-Bill 139 procedures and law.

[3] PL180649 relates to an application to sever the Subject Site (“Consent Application”), such that lands fronting Garden Road would provisionally be authorized to create three lots, leaving a larger retained lot on the north end of the Subject Site. It is that larger retained lot area that is now the subject of the Legacy Appeals.

[4] The Tribunal had before it the affidavits of three planners: on behalf of the Moving Parties, Allan Ramsay (engaged by the City) and John Lohmus (engaged by the Connellys and Mr. Davies); on behalf of the Applicant, Ruth Victor filed an affidavit. There was no opposition to the qualifications of these individuals to provide opinion evidence in the area of land use planning and the Tribunal so qualified them for that purpose.

[5] Proposed to be developed on the Garden Road lots are three detached dwellings, all within and as permitted by the zoning permissions. No official plan amendments are sought or required. The proposed larger retained lot continues to require the requested ZBLA and OPA to allow for the development of townhouses and semi-detached homes as part of a condominium development.

[6] The Applicant’s initial ZBLA and OPA applications pertained to the entire Subject Site. The lots that are now proposed to be severed for detached dwellings were originally proposed for semi-detached dwellings, which made it necessary to seek an OPA and ZBLA for this portion of the site as well. It was further to City staff comments that the Applicant revised its proposal to eliminate the semi-detached houses fronting Garden Road, and instead, ultimately, proceed by way of Consent Application for the development of three detached dwellings on that portion of the Subject Site instead.

[7] The Consent Application was authorized by the City’s Committee of Adjustment and appealed by Mr. and Ms. Connelly, who are parties to PL171169. To permit Mr.

Davies and the City to participate in the consolidation motion along with the Connellys, the Tribunal granted party status to both Mr. Davies and the City in PL180649, as addressed in the Tribunal's disposition dated August 28, 2018. The Tribunal now confirms this status.

[8] After a careful review of the records and upon hearing submissions from counsel, the Tribunal concludes it must dismiss the motion.

EVIDENCE AND ANALYSIS

Legal Framework for the Appeals

[9] This is likely the first matter in which parties are seeking to consolidate legacy and post-Bill 139 appeals.

[10] The Consent Application is subject to post-Bill 139 rules. In the context of consent applications, this means that the only change relates to timing of that appeal. The process and evidence by which this type of appeal is disposed of is unchanged, i.e. it is a hearing *de novo*. In that way, it is the same as the Legacy Appeals, which are also hearings *de novo*. However, the Consent Application is now subject to a time period within which it is to be disposed of (i.e. it is to be heard and disposed of within six months).

[11] The Tribunal has the ability to "stop the clock" on time limitations if it is necessary for the fair and just determination of the appeal.¹ The parties agreed this test applies in the context of the Consent Application, i.e. is postponement of the Consent Application necessary for the fair and just determination of the Consent Application appeal. It does not relate to the Legacy Appeals.

[12] The Legacy Appeals have no statutory limits placed on them for the disposition of

¹ Section 1(2)(1)(ii) of O. Reg. 102/18. Other grounds exist to adjourn a matter, but these do not apply in this situation.

a decision, in accordance with the former applicable processes. The Legacy Appeals are now set down for a hearing for eight days, beginning May 27, 2019.

[13] Under the new framework, the Consent Application would be set down for a hearing and disposed of before the Legacy Appeals get to hearing, subject only to the postponement provisions of the regulations.

Issues

[14] In this new world of time limitations being imposed on the Tribunal for post-Bill 139 appeals, the Tribunal must be very cautious in postponing a matter. There is now direction from the legislature that matters under the new rules are anticipated to be disposed of within a particular time frame.

[15] The Tribunal sought some direction from the parties as to how it should be considering the consolidation request in light of Bill 139 changes mandating time periods for the conclusion of post-Bill 139 appeals.

[16] The Applicant's view was that "the true nature of the Joint Motion is to request the Tribunal to stop the clock ... with respect to the [Consent Application] so that [it] can be heard with the [Legacy Appeals]". The Applicant submitted this would amount to a continued delay of the Consent Application, which has already been postponed to address this motion.

[17] The Moving Parties proposed that the Tribunal should consider the consolidation request first and if the motion for consolidation fails, the inquiry ends there. If there was a justification for consolidation, then the Tribunal would then turn its mind to the test for postponing a Bill 139 appeal.

[18] The Tribunal has concluded that the matter of consolidation in the context of these facts is the following:

- a. The Tribunal should first determine whether the appeals meet the usual test for consolidation as previously established. If there is no reason to consolidate the matters, then that is the end of the inquiry.
- b. If consolidation would be appropriate in the normal course, then the Tribunal must consider whether to exercise its discretion to postpone a post Bill 139 appeal on the basis that consolidation is necessary for the fair and just determination of that appeal. If the Tribunal concludes consolidation is not necessary to the fair and just determination of that appeal, then the consolidation request should be refused.

Analysis

[19] After review of the records filed and in consideration of the submissions made on the TCC, the Tribunal concludes that there is no basis for having the matters consolidated or heard together.

[20] The criteria for consolidation as established in previous Ontario Municipal Board (“Board”) jurisprudence is the following:

- a. whether there are common facts;
- b. whether there are common issues;
- c. whether there are common questions of law;
- d. what constitutes the most efficient use of the Board’s time;
- e. prejudice to any party; and
- f. the possibility that a decision on one matter may predetermine a subsequent matter before the Board or result in the possibility of

inconsistent decisions.

[21] The Tribunal has struggled to understand how any of the foregoing are engaged.

[22] It is possible that consolidation *may* lead to a slightly more efficient hearing process. Some background information may be the same, and witnesses could give all their evidence at once, potentially creating some efficiencies. The same provincial framework and official plan (“OP”) applies in both cases as well, though this is true for any applications within this area of the City. Ultimately, the particulars to be considered and the planning opinions involved relate to what are now two factually quite distinct proposals, however.

[23] In addition to provincial matters that must be considered under the *Planning Act* (“Act”) for all applications: specifically, consistency with the Provincial Policy Statement, 2014; conformity with the Greater Golden Horseshoe Plan, 2017; and matters enumerated in s. 2 of the Act. The provisions of s. 51(24) are to be regarded to when making a consent decision. The s. 51(24) provisions of the Act require a decision maker, among other things, to have regard to whether the consent proposal conforms to the City’s OP.

[24] The Moving Parties urged that two overriding matters are of importance to both the Legacy Appeals and the Consent Application. These are the urban forest policies and character policies within the OP.

[25] The Tribunal does not find this a persuasive, or perhaps even accurately styled, basis for consolidation.

[26] In respect of the urban forest, Counsel for the Applicant acknowledged trees will have to be removed if the Consent Application decision is upheld and the Applicant proceeds to fulfil the necessary conditions to obtain the final consent permissions. As a factual matter, the Tribunal understood that most of the trees are on the lands subject to

the consent, not the lands that are the subject of the Legacy Appeals.

[27] How this question of the urban forest is intertwined with the Legacy Appeals is unclear to the Tribunal. The Tribunal will have an obligation to have regard to conformity with the OP's provisions on the urban forest, whether or not the Legacy Appeals are heard with the Consent Application. Ultimately, which trees will be removed is to be finally determined at site plan stage, and their removal is subject to the tree by-law provisions of the City.

[28] Regarding character or compatibility concerns, this particular issue does not arise in the context of the built form for the Consent Application. The detached dwellings proposed to be built on the conveyed lands and provisional lots are permitted as-of-right. No variances are or were proposed to other standards, such as setbacks or lot frontage. The issue in terms of compatibility in the Consent Application is lot size and shape.

[29] The character or compatibility concerns in the context of the Legacy Appeals arise primarily because the Applicant proposes to introduce a different dwelling type – towns and semis on the larger retained lot – it is this that has necessitated the OPA and ZBLA applications.

[30] In sum, there are different kinds of compatibility concerns engaged in the Legacy Appeals and for the Consent Application. As the Applicant noted, the Legacy Appeals do not create lots. They deal with land use permissions and zoning by-law standards. The Consent Application deals with lot creation, not with land use permissions or zoning standards.

[31] Ultimately, there do not appear to be common facts, issues, or questions of law engaged in the Legacy Appeals and the Consent Application. There is no risk of a predetermination of issues in the Legacy Appeals by virtue of allowing the Consent Application to proceed, however it is decided. There is no possibility of inconsistent

decisions.

[32] In light of these findings, the Tribunal need not consider the matter further and denies the motion.

[33] Nonetheless, the Tribunal addresses another point made by the Moving Parties. The Tribunal understood the Moving Parties to suggest that the public has a legitimate expectation that since the initial application related to the entire Subject Site, that the matters should therefore be considered together. They further noted that it could be an inconvenience to the participants to have to attend at two different hearings.

[34] On the first point, the Tribunal emphasizes that the proposal has changed in such a way that the Subject Site is to be developed differently on different locations of the site in response to City staff comments. There is no longer a single project engaging similar planning or even any substantially similar factual issues on the entirety of the Subject Site. There is no particular reason why it should continue to be treated as one proposal when it is no longer one proposal. Each will stand or fall on its own merits. The Applicant will have to determine how to proceed if either the Legacy Appeals or the Consent Application is unsuccessful; or if modifications or conditions are imposed that are problematic to the Applicant.

[35] There may be a potential inconvenience to participants by asking them to attend on more than one day to give a statement on the Consent Application, and then another day during the Legacy Appeals. Inconvenience to participants is not part of the consolidation test and certainly could not form the basis for the Tribunal to postpone the Consent Application under the regulations.

[36] For the parties and their witnesses, at most it may result in one and possibly two additional attendance days as distinct hearings. At least one additional day was already anticipated to be required if the matters were consolidated in any event. An efficiency improvement alone is not a basis upon which the Tribunal could postpone the Consent

Application.

NEXT STEPS

[37] Originally, the Tribunal had proposed to the parties that a single day for the Consent Application hearing be scheduled, should it decide not to consolidate the matters. At the TCC, the opposing parties suggested three days should be set aside for a distinct hearing of the Consent Application. The Applicant was of the view the matter could be heard in one day or, at the outside, two days.

[38] Given the number of witnesses anticipated to be involved by the parties, and given that participants are likely to attend to speak at the Consent Application, the Tribunal concludes that two days for this matter is prudent. The Tribunal has now set the matter down for February 13 and 14, 2019. The Tribunal will confirm any additional parties or participants at the outset of Consent Application hearing, in accordance with its usual practices.

[39] The Tribunal will proceed to issue its required Notice of Hearing for the Consent Application.

[40] The Tribunal, concurrently with issuance of this decision, is issuing a Notice of Resumption for the Consent Application.

ORDER

[41] The motion is dismissed.

“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
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