

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



ISSUE DATE: June 04, 2019

CASE NO(S): PL171429

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:	Losani Homes (1998) Ltd.
Subject:	Application to amend Zoning By-law (No. 110-01) - Neglect of the County of Brant to make a decision
Existing Zoning:	Agriculture Restrictive (AR)
Proposed Zoning:	Residential Multiple Second Density Zone (R5)
Purpose:	To permit low and medium density residential uses and to increase the amount of land subject to restrictive environmental protective zoning
Property Address/Description:	Pt of lot 31 & 32, Pt of Gore Tract, Pt of Lot 9.
Municipality:	County of Brant
Municipality File No.:	ZBA 20/09/SS
OMB Case No.:	PL171429
OMB File No.:	PL171429
OMB Case Name:	Losani Homes (1998) Ltd. v. Brant (County)

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Property Address/Description: Pt of lot 31 & 32, Conc.1 Pt of Lot 2 Block 32
 Municipality: County of Brant
 Municipality File No.: ZBA 16/09/SS
 OMB Case No.: PL171429
 OMB File No.: PL180125

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

Applicant and Appellant: Losani Homes (1998) Ltd.
 Subject: Proposed Plan of Subdivision - Failure of the County of Brant to make a decision
 Purpose: To permit low and medium density residential uses by means of a plan of subdivision

Property Address/Description: Pt of lot 31 & 32, Pt of Gore Tract, Pt of Lot 9.
 Municipality: County of Brant
 Municipality File No.: PS1/10/SS
 OMB Case No.: PL171429
 OMB File No.: PL171430

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

Applicant and Appellant: Losani Homes (1998) Ltd.
 Subject: Proposed Plan of Subdivision - Failure of the County of Brant to make a decision
 Purpose: To permit low and medium density residential uses by means of a plan of subdivision

Property Address/Description: Pt of lot 31 & 32, Conc.1 Pt of Lot 2 Block 32
 Municipality: County of Brant
 Municipality File No.: PS2/10/SS
 OMB Case No.: PL171429
 OMB File No.: PL180126

Heard: May 9, 2019 by telephone conference call

APPEARANCES:

Parties

Losani Homes (1998) Ltd.

Counsel

Denise Baker

County of Brant

Jyoti Zuidema

MEMORANDUM OF ORAL DECISION DELIVERED BY MARCIA VALIANTE ON MAY 9, 2019 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This proceeding relates to appeals brought by Losani Homes (1998) Ltd. (“Applicant”) with respect to the failure of the County of Brant (“County”) to approve applications for a zoning by-law amendment and a draft plan of subdivision within the relevant statutory periods, pursuant to ss. 34(11) and 51(34) of the *Planning Act*. The approvals would permit a residential development on property described as Part of Lot 31 and 32, Part of the Gore Tract and Part of Lot 9, and lands known as Part of Lot 31 and 32, Concession 1, Part of Lot 2 and Block 32, in Paris, Ontario.

[2] The Local Planning Appeal Tribunal (“Tribunal”) held the first Pre-hearing Conference (“PHC”) on October 12, 2018. At that time, no persons requested Party or Participant status in the proceeding. Anticipating that the proceeding might be settled, the Tribunal scheduled a second PHC for May 9, 2019. The second PHC was converted into a telephone conference call.

[3] At that time, the Parties informed the Tribunal that a revised development proposal had been submitted to the County on April 16, 2019, but that there was no settlement and the matter would proceed to a hearing. The Parties submitted a draft Procedural Order and Issues List for the Tribunal’s consideration.

[4] The Tribunal approved the draft Procedural Order and Issues List; a final version was subsequently provided to the Tribunal and is attached as Attachment 1 to this Order. The Tribunal also scheduled a five-day hearing, to commence on **Monday, January 6, 2020**, as set out in the Order below.

ORDER

[5] The Tribunal orders:

a. The hearing will commence on **Monday, January 6, 2020 at 10 a.m. at:**

**Municipal Building
Council Chambers (Ground Floor)
7 Broadway Street West, Paris
Brant, ON**

b. The hearing will be conducted in accordance with the Procedural Order attached as Attachment 1 to this Order.

[6] This Member is not seized.

"Marcia Valiante"

MARCIA VALIANTE
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
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

L.P.A.T. Case No. PL171429

ISSUE DATE: **CASE NO(S):** PL171429

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Municipality File No.: PS2/10/SS
OMB Case No.: PL171429
OMB File No.: PL180126

PROCEDURAL ORDER

The Tribunal orders that:

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.
2. The Parties and Participants identified at the October 12, 2018 Prehearing Conference are listed in **Attachment 1** to this Order. See **Attachment 2** for the meaning of the terms “Party” and “Participant”.

Organization of the Hearing

3. The Hearing will begin on January 6, 2020 **at 10:30 a.m.** at the Municipal Building, Council Chambers, 7 Broadway Street West, Paris, County of Brant, Ontario, N3L 2R2. No further notice shall be required.
4. The length of the Hearing will be **5 days**. The length of the Hearing may be shortened as issues are resolved or settlement is achieved.
5. The Issues are set out in the Issues List attached as **Attachment 3**. There will be no changes to this list unless the Tribunal permits. A Party who asks for additions may have costs awarded against it.
6. The order of evidence at the Hearing is listed in **Attachment 4**. The Tribunal may limit the amount of time allocated for opening statements, direct evidence (including the qualification of witnesses), cross examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.

Requirements Before the Hearing

7. A Party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other Parties, and the County Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before August 9, 2019. For expert witnesses, a Party must include a copy of the witness’s *curriculum vitae* and the area of expertise in which the witness is proposed to be qualified.
8. A meeting of like experts shall be held at least by September 9, 2019. The purpose of this meeting is to scope or resolve issues for the preparation of an Agreed Statement of Facts which shall be filed with Tribunal.
9. An expert witness shall prepare an expert witness statement, which shall include:
 - a. An acknowledgement of Expert’s Duty;

- b. The area(s) of expertise; and,
- c. Any reports prepared by the expert and any other documents to be relied on at the Hearing.

Copies of this must be provided as set out in section 12. 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.

- 10. A Participant must provide to the Tribunal and the Parties a Participant Statement on or before November 7, 2019 or the Participant may not give oral evidence at the Hearing.
- 11. 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 12.
- 12. On or before November 7, 2019, the Parties shall provide copies of their written evidence and expert witness statements to the other Parties and to the County Clerk.
- 13. Parties may provide to all other Parties and file with the County Clerk a written reply to any written evidence or expert witness statement, provided that such reply is circulated to all other Parties on or before December 6, 2019.
- 14. A person wishing to change written evidence, including expert witness statements, must make a written motion to the Tribunal in accordance with the Tribunal's Rules.
- 15. A Party who provides a witness' written evidence or expert witness statement to the other Parties and the County Clerk must have the witness attend the Hearing to give oral evidence, unless the Party notifies the Tribunal by December 30, 2019 that same is not part of their record.
- 16. The Parties shall prepare a Joint Document Book on or before December 17, 2019, the reasonable cost of which shall be shared by the Parties, and which will be filed with the Tribunal on the first day of the Hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the Hearing unless ordered otherwise by the presiding Member.
- 17. On or before December 20, 2019 the Parties shall forward to the Tribunal a copy of the work plan to govern the Hearing, which shall identify the approximate amount of

time required for each witness and the amount of time for submissions by the Parties.

18. On or before December 27, 2019, 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.
19. An Agreed Statement of Facts, if necessary, shall be filed with the Tribunal at the commencement of the hearing.
20. Documents may be delivered by personal delivery, email, 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.
21. 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.

SUMMARY OF KEY DATES

Date	Hearing Event
August 9, 2019	Exchange of list of witnesses and the order in which they will be called
September 9, 2019	Meeting of like experts
November 7, 2019	Exchange of expert reports/expert witness statements/written evidence, evidence outlines for witnesses under summons
November 7, 2019	Exchange of Participant Statements
December 6, 2019	Exchange of reply evidence/statements
December 17, 2019	Completion of Joint Document Book
December 20, 2019	Completion of Work Plan for Tribunal
December 27, 2019	Exchange of visual evidence
December 30, 2019	Notification to Tribunal and Parties if witness not to provide oral evidence
January 6, 2020	Hearing

ATTACHMENT 1 -- Parties and Participants

Parties

Losani (Nith Peninsula)

Weir & Foulds LLP
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario M5K 1B7
Canada
Tel: 416.365.1110
Fax: 416.365.1876

Denise Baker

T: 416.947.5090
E: *dbaker@weirfoulds.com*

County of Brant

Solicitor and Corporate Counsel
P.O. Box 160
Burford, ON N0E 1A0

Jyoti V. Zuidema

T: 519.449.2451 x 2297
E: *jyoti.zuidema@brant.ca*

ATTACHMENT 2

Purpose of the Procedural Order and Meaning of Terms

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 <http://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 3

Issues List

Note: The identification of an issue on this list does not mean that all Parties agree that the issue, or the manner in which it is expressed, is appropriate for or relevant to the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the Hearing.

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.

County of Brant Issues:

PLANNING ISSUES:

1. Has the Applicant provided a revised Draft Plan to reflect the recent land exchange with the County?
2. Has the Applicant submitted the Nith Peninsula Area Study in accordance with Section 2.2.4 of the Official Plan? Has the Area Study been adopted by Council?
3. Has the Applicant demonstrated that the design of the dwelling units in the proposed development conform to the proposed setback regulations, lot area and frontages?
4. Has the Applicant submitted the proposed Zoning By-Law Amendment?
5. If the County lands adjacent to Victoria Park are used for the connection of Street "C" to Dundas Street West should the entire block be sold to the Applicant?
6. Has the Applicant further defined the size of the Park Block for analysis? If so, has the Applicant demonstrated that the park is large enough?
7. Has the Applicant demonstrated that a trail connection to Lions Park and the Penman's Pass Bridge has been provided?
8. Should Block 12 Park (0.281 ha) (adjacent to the north part of Block 14 Wetlands) be part of an accessible trail connection leading to Lions Park?
9. Are there other conditions which should be imposed by the Local Planning Appeal Tribunal if development is approved for the subject lands?
10. Is the Grand River Conservation Authority satisfied with the proposed development?

Draft Plan of Subdivision

11. Does the proposed Plan identify the radii of the lot property lines at the road bends?
12. Has the Applicant dimensioned the day-lighting triangles at the intersections?

Servicing and Infrastructure

13. Has the Applicant demonstrated that the proposed plan is self-contained and does not rely on the addition of lands not owned by the Applicant for the location of SWM Ponds?
14. Given the proposed development's proximity to the Nith River, has the Applicant addressed the GRCA's comments with respect to stormwater management?
15. Has the Applicant provided the GRCA with additional details regarding the sizing of the stormwater pond identified as Block 8, as well as any proposed overflow routes?
16. Has the Applicant provided the GRCA further details with respect to the proposed interim or temporary stormwater management solutions?

Financial Impact Analysis (FIA)

17. Has the Applicant revised the P.P.U. assumptions in the FIA to reflect the 2016 Census information?
18. Has the Applicant provided the infrastructure costs (both local and DC related)?
19. Has the Applicant provided an updated FIA?
20. Has the applicant considered additional road lengths and units in the recalculation of the fiscal impact?
21. Has the applicant provided growth/non-growth calculation and that the non-growth amount be factored into the FIA?

Water Distribution

22. Has the Applicant verified that the growth related share of the external watermain infrastructure is 100%? If no, should the Applicant factor the non-growth related amounts into the analysis?

Sanitary Sewers

23. Is there sufficient sanitary sewer capacity, currently and/or planned, for the development that would be permitted by the Draft Plan of Subdivision and the

Zoning By-Law Amendment taking into account other planned developments and scheduled improvements? If no, is the proposed rezoning and plan of subdivision premature?

24. Does the Functional Servicing Report address all matters in accordance with the County's current standards and determine that there are no adverse impacts caused by the proposed development on sanitary sewer flows and water demand?

Engineering, Traffic and Parking

25. Is the Traffic Impact Study submitted by the Applicant up to date and does it demonstrate that there are no adverse traffic impacts caused by the proposed development?
26. Should the extension of Gort Avenue and Street C be DC funded?
27. Is the extension of Street C to Dundas Street West necessary as an alternative access point to the proposed development for emergency services?

ATTACHMENT 4

Order of Evidence

Note: Participant testimony will be scheduled at the opening of the Hearing.

1. Losani
2. County of Brant
3. Reply by Losani