

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



**ISSUE DATE:** July 18, 2018

**CASE NO(S):**

PL180427

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

Appellant:	Santo Paola
Applicant:	Gabriele Colonna
Subject:	Consent
Property Address/Description:	6660 Hawkins Street
Municipality:	City of Niagara Falls
Municipal File No.:	B-2018-005
OMB Case No.:	PL180427
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OMB Case Name:	Paola v. Niagara Falls (City)

**Heard:** July 6, 2018 in Niagara Falls, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Gabriele Colonna ("Owner")	Self-represented
Habitat for Humanity Niagara ("Applicant")	K. Gowans
Santo Paolo ("Appellant")	F. DeLuca
City of Niagara Falls ("City")	K. Beaman*

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON  
JULY 6, 2018 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The matter before the Tribunal is a consent application proposing to sever the rear portion of the lands known municipally as 6660 Hawkins Street ("Subject Lands") and merge the severed parcel with other lands owned by the Applicant. The consent was approved by the Committee of Adjustment ("Committee") subject to some conditions, and appealed by the Appellant who resides at 6680 Hawkins Street.

[2] The Tribunal held a hearing in Niagara Falls and heard the evidence of the Appellant in opposition to the consent, and that of John Ariens, a land use planner, on behalf of the Applicant and in support of the decision by the Committee. The Owner was present at the hearing but did not participate. The City was represented by counsel, who called no evidence but did make submissions in support of the decision by the Committee.

**BACKGROUND AND CONTEXT**

[3] The Subject Lands consist of two parts: Part 1 being Lot 132 on Registered Plan 226, having frontage of about 18.29 metres ("m"), a depth of about 39.62 m, and containing the Owner's one storey dwelling ("Retained Lands"), and Part 2 being a long sliver of land having a width of 15.24 m and a depth of about 64.65 m which are vacant ("Severed Lands") and attached at the rear of the Retained Lands (see Exhibit 1, Tab 1).

[4] The Applicant currently owns two adjacent parcels of land: first, an irregularly shaped parcel of land of about 3,513 square metres that is essentially located mid-block at the rear of the Appellant's lands (Part 3) and abutting the Severed Lands and secondly, Lot 135 on Registered Plan 226 (Part 4) which provides access to Hawkins Street, along the side of the Appellant's lands (see Exhibit 1, Tab 1).

[5] Lot 133 on Registered Plan 226 is vacant and it separates the Appellant's lands

at Lot 134 from the Retained Lands at Lot 132.

[6] The Applicant seeks to add the Retained Lands to its existing lands (Parts 3 and 4), and create a larger redevelopment opportunity similar to two other redevelopment projects that have been completed within the City block of Hawkins Street to the north, Dell Avenue to the east, McLeod Road to the south, and Adams Avenue to the west. The first redevelopment was a three-storey building and the second redevelopment was a five-storey building and both had their access to McLeod Road.

[7] The Official Plan for the Region of Niagara designates the Subject Lands as Built Up Area and directs that a significant portion of the City's growth will derive from intensification.

[8] The Subject Lands are designated Residential in the City's Official Plan which designation permits a range of residential dwelling forms: single-detached, semi-detached, duplexes, triplexes, quadraplexes, townhouses, and apartments.

[9] The Subject Lands are split zoned: the Retained Lands are zoned Single-Family Residential 1C. The Severed Lands are zoned Residential 4, which is Residential Low Density, Grouped Multiple Dwellings, which allows townhouses or an apartment building.

[10] The Planning Department circulated the application for consent to the appropriate agencies and departments and no objections were received.

[11] The report from the Director of Planning, Building & Development dated March 16, 2018 recommended approval with conditions to ensure that the Severed Lands merge with the title to the Applicant's lands being Part 3 and 4.

[12] At the hearing, the Appellant relied solely on the grounds set out in his letter of appeal which was marked as Exhibit 4.

[13] His appeal letter raised questions and concerns with a number of matters

including: that Habitat for Humanity should have been the proper name for the application, that notice was not provided effectively, that misleading information was provided to the Committee, that the ultimate redevelopment proposal is not known, that the other area redevelopments access to McLeod Road, and not to Hawkins Street, that the lands will not have access to a public street, that the development proposal does not conform to the neighbourhood, that there is no community support for the consent application and the consent is premature.

[14] In support of the consent application, the Tribunal heard the expert land use planning evidence of Mr. Ariens, who reviewed the Provincial Policy Statement (“PPS”), the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”), the Regional Official Plan, the City’s Official Plan, and the City’s Zoning By-law, and opined with regard to all the consent criteria found in s. 51(24) of the *Planning Act* and testified as to the appropriateness of the Committee’s conditions of approval requiring the steps to be taken for the Severed Lands to merge with Parts 3 and 4.

[15] For the reasons set out below, the Tribunal dismissed the appeal, upheld the Committee’s decision, and authorized the consent subject to the same conditions of approval as set out by the Committee.

## **DECISION**

[16] The appeal before the Tribunal is an application for a consent to sever the proposed Severed Lands (Part 2) from the Retained Lands (Part 1). The Part 2 lands are vacant and excess to the Retained Lands. The evidence is that if the consent were authorized, Part 1 would fully comply with the City’s Zoning By-law.

[17] The purpose of the consent is a lot addition: i.e. to merge the Severed Lands with Parts 3 and 4 owned already by the Applicant.

[18] Notwithstanding the Appellant’s submissions to the contrary, the consent application form (Exhibit 2, Tab 2) clearly sets out that the agent for the application is Habitat for Humanity, and the affidavit of the City (Exhibit 6) confirms the public notice

that was given in accordance with the requirements of Ontario Regulation 199/96.

[19] The consent application was duly circulated by the City and there were no objections from any commenting agency.

[20] The consent application was approved by the Committee, subject to certain conditions of approval requiring the Severed Lands (Part 2) to merge with the Applicant's lands (Parts 3 and 4).

[21] The Appellant resides on a lot abutting Parts 3 and 4. His concerns *inter alia* as expressed in Exhibit 4 related to how the application was processed, with regard to the parking for the church, and what will be developed on the merged parcel of land.

[22] What is before the Tribunal is clearly the first step in a redevelopment process, which will require further City applications likely involving a Zoning By-law Amendment application, perhaps a condominium application, and perhaps a site plan application.

[23] All of these processes require public notice, statutory meetings by City Council, and decisions by the City Council.

[24] In the hearing, the Tribunal heard the uncontroverted expert land use planning opinion evidence of Mr. Ariens in which he has opined that the proposed consent application is consistent with the PPS, conforms to the Growth Plan, and conforms to the Regional and City Official Plans. He testified that the consent would enable a large, vacant and underutilized parcel of land in the built up portion of the City to be merged with other lands that will be the subject of a further development process to provide additional affordable housing, using existing infrastructure, and is transit supportive. He reviewed all the criteria of s. 51(24) of the *Planning Act* and testified that all the criteria had been met.

[25] The Tribunal agrees. This is just the first step that creates a larger parcel of land in the built up area of the City, where intensification and redevelopment are encouraged and have occurred, where the necessary existing infrastructure exists, and the merged

parcel will have access to Hawkins Street. The application will not create a land locked parcel, and the application is not premature.

[26] The Tribunal finds that the consent application is consistent with the PPS, conforms to the Growth Plan, and to the Regional and City Official Plans.

[27] The Tribunal finds that the consent application meets all the criteria of s. 51(24) of the *Planning Act*, that it represents good planning and is in the public interest.

[28] Accordingly, the Tribunal will:

- a. Dismiss the appeal;
- b. Uphold the decision of the Committee;
- c. Give provisional consent subject to the same conditions of approval as required by the Committee and as set out in Exhibit 2, Tab 5, page 24.

[29] This is the Order of the Tribunal.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

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