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

ISSUE DATE: January 15, 2019 **CASE NO(S).:** PL180612

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:	Stephen Farnham
Applicant:	489376 Ontario Inc.
Subject:	Consent
Property Address/Description:	1465 Carmen Drive
Municipality:	City of Mississauga
Municipal File No.:	B030/18
OMB Case No.:	PL180612
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OMB Case Name:	Farnham v. Mississauga (City)

Heard: November 29, 2018 in Mississauga, Ontario

APPEARANCES:

Parties	**Counsel*/Representative**
489376 Ontario Inc. ("Applicant")	J. Meader*
Stephen Farnham ("Appellant")	Self-represented

DECISION OF THE TRIBUNAL DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Applicant owns the lands known municipally as 1465 Carmen Drive ("Subject Lands") and it applied to the City of Mississauga ("City") for consent to sever the Subject Lands. The Appellant resides next door at 1475 Carmen Drive.

[2] The Retained Lands would have a lot frontage of 38.76 meters ("m") and a lot area of 1,230.6 square meters ("m^2") and retain the existing one storey dwelling. The Severed Lands would have a lot frontage of 30.8 m and a lot area of 956.1 m^2.

[3] The application was duly circulated, and agency comments provided.

[4] The City Planning and Building Departments advised that the Subject Lands were on a corner lot on Carmen Drive in the Mineola neighbourhood. The Subject Lands are designated Residential Low Density I and are zoned R1-2 (Residential).

[5] The Planning Staff were of the opinion that the Applicant's proposal had due regard for section 51(24) of the *Planning Act* ("PA"), that the lots are appropriately sized and the proposal conformed with the Mississauga Official Plan, was consistent with the Provincial Policy Statement ("PPS") and conformed to the Growth Plan for the Greater Golden Horseshoe (2017) ("Growth Plan") and had no objection.

[6] The Transportation and Works Department of the City recommended two conditions: first an overall servicing proposal, and second an overall grading and drainage plan.

[7] The Committee of Adjustment ("Committee") heard the matter, and granted provisional consent subject to the recommended conditions.

[8] The Appellant appealed.

PRELIMINARY MOTION

[9] At the hearing, counsel for the Applicant raised a preliminary objection with regard to the appeal.

[10] She took the Tribunal to Exhibit 2, Tab 11 which contains the Appellant's Appeal ("Form A1") and specifically took the Tribunal to section 5 with regard to subject information and pointed out that the box entitled 'Outline and Nature of the Appeal and the Reasons for the Appeal' was totally blank. She asked the Tribunal to note that there was no covering letter with the appeal (that might have set out the reasons for the appeal).

[11] She then referenced subsection 53(19) of the PA which the Tribunal will set out in full.

> Any person or public body may, not later than 20 days after the giving of notice under subsection (17) is completed, appeal the decision or any condition imposed by the council or the Minister or appeal both the decision and any condition to the Tribunal by filing with the clerk of the municipality or the Minister **a notice of appeal setting out the reasons for the appeal,** accompanied by the fee charged under the Local Planning Appeal Tribunal Act 2017. (emphasis added)

[12] Counsel for the Applicant submitted that not only were no reasons for the appeal in the Form A1, and no covering letter that might have provided some reasons for the appeal, but that in the lead-up to the hearing she had contacted the Appellant directly to ascertain what his issues were, but to no avail.

[13] Her submission to the Tribunal was that there was a statutory condition precedent contained within subsection 53(19) of the PA and that as the appeal was blank and failed to disclose any reasons whatsoever, it was therefore void ab initio.

[14] The Appellant, a tax accountant, was self-represented.

[15] He confirmed that there were no reasons in the Appeal form ("A1") but that he had not been told by either the municipality or the Tribunal that such reasons were required.

[16] The Tribunal reserved its decision on the Preliminary Motion and heard the appeal on its merits and will now render a decision with regard to both the Preliminary Motion and the hearing on the merits.

CONTEXT

[17] The Subject Lands are generally found within the southwest quadrant of Queen Elizabeth Highway and Cawthra Road.

[18] Bisecting this quadrant on a north/south basis is the Cooksville Creek. The Subject Lands are located on the east side of the Cooksville Creek and are designated as Residential Low Density I.

[19] Carmen Drive is an “L” shaped road extending southerly from the South Service Road until it bends and proceeds easterly to Trotwood Avenue. The Subject Lands are found on the interior of the bend in Carmen Road.

[20] Exhibit 5 is a copy of the Plan of Survey from 1941 apparently creating 43 lots on both sides of Carmen Drive and the Subject Lands are shown as being Lot 24.

[21] Since 1941 there has been development in the immediate area including the apparent subdivision of Lot 23 located immediately south of the Subject Lands into three lots serviced by a private laneway on the west side of the property.

[22] Considerable development has occurred to the east; the Trotwood Avenue area has been fully subdivided and it is zoned R3 – 1.

[23] The Residential Low Density 1 designation permits detached homes. The R1 – 2 zoning permits detached homes, requires a minimum lot frontage of 30.0 m and a minimum lot area for an interior lot of 750 m^2 and on a corner lot 835 m^2.

[24] The photographs submitted show Carmen Drive is built to a rural cross-section with no curb, no gutters, no sidewalk and no storm drains. Carmen Drive is made up solely of detached homes: some bungalows, some two-storeys, with evidence of reinvestment in terms of replacement housing.

[25] In support of the appeal the Tribunal heard evidence from the Appellant, and from Maria Furlin on behalf of the (unincorporated) Credit Reserve Association and also received two statements that were left with the Board and are filed as Exhibits 1 and 19.

[26] In giving evidence on his own behalf the Appellant based his case on the following issues:

- Inconsistency with the PPS.
- Nonconformity with the Official Plan with regard to:
    - The character of the area;
    - Proposed development in a non-intensification area;
    - Not conforming with the Green System directives of the Official Plan;
    - Not conforming to the Objective Test with regard to the preservation of character in the Mineola Neighbourhood;
    - Did not have an appropriate regard for subsection 51(24) of the PA in terms of (c) conformity with the Official Plan; (d) suitability of the land for development; (f) the dimensions and shapes of the lots; and (h) the conservation of natural resources and flood control.

[27] With regard to the PPS the Appellant submitted that policies 2.1.1, 2.1.2 and 4.7 were offended.

[28] Policy 2.1.1 states “natural features and areas shall be protected for the long term”.

[29] Policy 2.1.2 states “the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.”

[30] Finally section 4.7 of the PPS states “the official plan is the most important vehicle for the implementation of this provincial policy statement.”

[31] The Appellant's argument in part is that due to the proliferation of eastern white pine trees on Carmen Drive it represents an old growth white pine forest and the trees should be preserved.

[32] With reference to the City of Mississauga's Official Plan he referenced the Green System in policy 6.2.12 where it is noted that Mississauga will encourage tree planting on public and private lands and strive to increase the urban forest canopy.

[33] He noted that the Official Plan references the fact that the urban forest includes all the trees within the City on both public and private lands and that in section 6.3.6 the City will seek to enhance the connectivity of lands in the Green System and encourage stewardship on private lands. Referencing policy 6.3.19 he argued that 'Development Proposals and Site Alterations for Lands within a Residential Woodland' will have to have regard to how existing tree canopy and understory are protected, enhanced, restored and expanded.

[34] Turning to the development provisions of the Official Plan and specifically section 5.3.5 he pointed out that Mississauga's neighbourhoods are not appropriate areas for significant intensification. Section 5.3.5.1 he said noted that neighbourhoods will not be the focus for intensification and should be regarded as stable residential areas where the existing character is to be preserved. He identified to the Tribunal Schedule 2 being the Intensification Areas and demonstrated that the Subject Lands do not fall within an Intensification Area and therefore intensification was not the objective of the Official Plan for the Mineola Area but rather the direction was to preserve and protect the existing character.

[35] Although not reproduced in his documents, the Appellant made reference to policy 16.1.2.1 which the Tribunal will quote in full:

> To preserve the character of lands designated Residential Low Density I and Residential Low Density II, the minimum frontage and area of new lots created by land division or units or parcels of tied land ("POTLs") created by condominium **will generally represent** the greater of:
>
> a. The average frontage in area of residential lots or units or POTLs on both sides of the same street within 120 meters of the subject property. In the case of corner

development lots, units or POTLs on both streets within 120 m will be considered; or

b. The requirements of the Zoning By-law. (emphasis added)

[36] The Appellant had his own interpretation and "correct calculations" for this section 16.1.1.2 "test" as found in Exhibits 13A and 13B. Exhibit 13A is his map showing 13 lots only located on Carmen Drive (and on no other street) for the purpose of considering the section 16.1.2 provision.

[37] Exhibit 13B purports to chart the lot size, depth and frontage based on City of Mississauga on-line services property information which results in the following: "The average frontage would be 29.29 m, the average depth being 77.85 m, and the average lot size being 3,197.01 m^2."

[38] From this the Appellant argued that the two proposed lots were completely out of character with the lots in his study area.

[39] The Appellant indicated that the two-storey home that was proposed to be built on the Severed Lands would "tower over the bungalow at 1401 Carmen Drive", that there would be a massive loss of trees on the Subject Lands, that there would be privacy and overview impacts to his property being immediately to the north of the Subject Lands, that there would be a loss of wildlife habitat, a loss of trees in this area that he claimed pursuant to the City's Official Plan was considered Residential Woodlands.

[40] Thus he submitted that the Tribunal should allow the appeal, dismiss the consent application as it was inconsistent with the PPS, did not conform to the Official Plan with regard to the neighbourhood character or the lot size, that the land was not suitable to be developed as it was to be considered as an urban forest with connectivity linkages, that the dimensions and the shape of the lots were not in character with the neighbourhood and that with regard to conservation of natural resources and flood control that this had not been adequately addressed.

[41] Under cross-examination the Appellant agreed that the property at 1401 Carmen

Drive was of a similar size to the Subject Lands. He also agreed that there were instances of bungalows being next to two-storey dwellings on Carmen Drive.

[42] He was shown Schedule 3 (the Natural System from the City of Mississauga's Official Plan) and depicted on Schedule 3 were the areas of Residential Woodlands and he confirmed that the Subject Lands were not found within the Residential Woodlands. He confirmed the Subject Lands were solely designated Residential Low Density I and they were located outside the Green Lands designation and not within any Natural Heritage System designation.

[43] Also appearing in support of the appeal was Maria Furlin who testified on behalf of the unincorporated Credit Reserve Association and emphasized that the existence of the trees was integral to the character of the neighbourhood. She expressed concern about the proposed size of the lots. She indicated that the Credit Reserve Association was not against infill and that there have been other more intensive developments that have been located within one kilometer of Carmen Drive but not in the middle of this "residential woodlot".

[44] The Tribunal then heard from the Applicant's Planner, David Brown. He took the Tribunal through the processing of the application, that the Retained Lands with the existing one-storey dwelling would be maintained, that it would have a frontage of 38.76 m and an area of 1,230.6 m^2. The Severed Lands would have a frontage of 30.48 m and a lot area of 956.1 m^2. He advised that the Zoning By-law requires frontage of 30 m and an interior lot area of 750 m^2 , and for a corner lot an area of 835 m^2 , and notwithstanding the Appellant's attempt to characterize the Subject Lands as not being a corner lot, it was irrelevant in the circumstances, as both proposed lots exceeded the minimum provisions of the Zoning By-law.

[45] With regard to the PPS he highlighted that section 1.1.3 (Settlement Areas) indicates that they shall be the focus of growth and development and their vitality and regeneration shall be promoted; that section 1.1.3.2 'Land Use Patterns within Settlement Areas' shall be based on densities and the mix of land uses which efficiently used land and resources, are appropriate for and effectively use the infrastructure and

public service facilities which are planned or available and avoid the need for their unjustified and/or uneconomical expansion; and section 1.1.3.4 that appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form while avoiding or mitigating risk to public health and safety.

[46] He opined that the consent application was a very modest form of intensification with the creation of one new lot with the retention of the existing bungalow on the Retained Lands, all of which was consistent with the PPS.

[47] He turned the Tribunal's attention to the Growth Plan, section 2.2.2 under the heading 'Delineated Built-Up Areas' and testified that the Subject Lands were found within the built-up area and the that the Growth Plan directed that "all municipalities will develop a strategy to achieve the minimum intensification target and intensification throughout the Delineated Built-Up Areas which will: a) encourage intensification generally to achieve the desired urban structure." He submitted that the Subject Application conformed to the Growth Plan.

[48] He reviewed the Region of Peel's Official Plan which he indicated was a high-level plan and that the Application conformed to the Region's Official Plan.

[49] With regard to the City's Official Plan he confirmed that the Subject Lands were designated only as Residential Low Density I.

[50] With regard to the Official Plan and section 5.3.5 and the character of the neighbourhood, he testified that the Official Plan does not expect residential neighbourhoods to be static but that development in neighbourhoods is anticipated and that it will be required to be context sensitive and respect the existing character and scale of development. He submitted that this development proposal was appropriate infill, it would fit the neighbourhood and there would be no undue adverse impacts.

[51] He addressed section 16.1.2.1 which is quoted above. In his view the Subject Lands being at the bend of Carmen Drive (where there was the smaller lot at 1401 Carmen Drive to the east, and the former Lot 23 to the south which had been

subdivided into three separate lots), was part of a transition between the character of Carmen Drive and the R3 – 1 zone located on Trotwood. It was his opinion that this proposed development was sensitive to the existing character, that it would reinforce the character of the neighbourhood and conform to the infill policies of the Official Plan.

[52] He noted that the Planning Staff had recommended and the Committee granted provisional consent and had adopted four conditions of approval which are set out in full at Exhibit 2, Tab 16.

[53] In closing Mr. Brown stated that no plan of subdivision was required and he reviewed all the criteria set out in subsection 51(24) of the PA, and confirmed that in his opinion the Subject development was consistent with the PPS and conformed to the Growth Plan, conformed to the City of Mississauga's Official Plan, that the lands were suitable for development, and that there were no issues with regard to natural resources or flood control.

[54] In summary he stated that the development application was a modest and appropriate form of intensification in a transition area between two neighbourhoods, that would have no unacceptable adverse impacts and would fit with the existing neighbourhood.

[55] He advised that the Subject Lands would be subject to site plan control and that the tree inventory would be dealt with at that stage. He disputed the suggestion that an approval here would be a negative precedent for any other development in the neighbourhood as the proposed severed portion of the Subject Lands was the flankage onto Carmen Drive and there were no other similar lots.

FINDINGS

[56] As noted above the Tribunal will provide two decisions with regard to this matter.

[57] Firstly concerning the Preliminary Motion and the issue of statutory compliance with subsection 53(19) of the PA concerning the giving of reasons for appeal, the Tribunal is aware that the Appellant is self-represented. It is apparent to the Tribunal

that in preparation for the hearing he had done considerable research.

[58] However the statute sets out the mandatory requirement that reasons are to be given for the appeal.

[59] In the examination of Exhibit 2, Tab 11 where the appeal form requires the giving of the reasons for the appeal, it is simply blank. Additionally there was no covering letter to the appeal form which might have provided the reasons for appeal.

[60] Moreover it is apparent that the Appellant was contacted by counsel for the Applicant to attempt to ascertain the reasons for the appeal and there is no indication on the record of any attempt by the Appellant to provide those reasons for his appeal.

[61] In the face of a statutory requirement that written reasons are to be given, and in the total absence of any written reasons, the Tribunal has no alternative but to find that there has been no compliance with the statutory requirement and pursuant to subsection 53(31)(c) of the PA, to dismiss the appeal. In addition to the above finding the Tribunal prefers the evidence of Mr. Brown and will uphold the decision of the Committee as recommended to it by the City of Mississauga's Planning Department.

[62] The PA requires for the consideration of a provisional consent, that a plan of subdivision is not necessary for proper and orderly development (subsection 53(1) of the PA) and that regard shall be had to the matters under subsection 51(24) of the PA as directed by subsection 53(12) of the PA.

[63] Subsection 51(24) inter alia notes that regard shall be had to: 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: f) the dimensions and shapes of the proposed lots: and h) the conservation of natural resources and flood control.

[64] The Tribunal finds that the development application is a modest infill development in a settlement area, that will use all existing infrastructure and thus is consistent with the PPS, that the Growth Plan encourages intensification throughout the built-up area, and that the development proposal conforms to the Growth Plan and

all matters of Provincial Interest in section 2 of the PA have been considered.

[65] The Appellant placed great weight on his submission that the consent does not conform to the Official Plan and that the Subject Lands are not in an area designated for intensification.

[66] The Tribunal does not agree. If the Appellant's argument were accepted, it would effectively negate the PPS, and the Growth Plan and instead utilize the development standards of 1941. The Tribunal will not do that.

[67] The Tribunal finds that the Subject Lands are not constrained by any designation in the Official Plan relating to Natural Heritage policies.

[68] The Tribunal finds that modest intensification may occur in existing neighbourhoods, and that such development is encouraged by the Growth Plan through out a built-up area.

[69] The Tribunal finds that the intent of the Official Plan provision is to preserve the character of the lands designated Residential Low Density I and Residential Low Density II, and not just some properties zoned R1-2.

[70] The Tribunal finds that the Subject Lands do not require a plan of subdivision, that the consent proposal conforms to the Official Plan, that the Subject Lands are suitable for development, that the dimensions and shapes of the proposed lots are compatible with and will fit the neighbhourhood, and that there are no issues with regard to the conservation of natural resources or flood control as evidenced by the lack of any objection from any department or commenting agency such as the Conservation Authority.

[71] In all matters, the Tribunal prefers the evidence of Mr. Brown.

[72] Moreover the Tribunal finds that the proposed severance application will exceed the minimum requirements of the R1 – 2 Zoning By-law, result in a form of housing that is compatible with the existing neighbourhood, and will have no undue impacts. The

Tribunal is satisfied that there are no Natural Heritage issues, that the Subject Lands are not found within the Residential Woodland, that the issue of tree preservation or replacement will be dealt with at the Site Plan stage.

[73] Thus the Tribunal will uphold the decision of the Committee, grant the provisional consent subject to the four conditions of approval found at Exhibit 2, Tab 16 (including the attached Memorandum from the Transportation and Works Department of the City of Mississauga dated May 31, 2018).

[74] This is the Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER