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

ISSUE DATE: April 05, 2019 **CASE NO(S).:** PL180649

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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)

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LPAT Case No.:	PL180649
LPAT File No.:	PL180650

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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

Heard: February 13-14, 2019 in Mississauga, Ontario

APPEARANCES:

Parties	**Counsel**
Tim and Ruth Connelly ("Appellants" or "Connellys") Andrew Davies	Ian Flett
2517015 Ontario Inc. ("Format Group Inc." or "Applicant")	Ian Andres

DECISION DELIVERED BY PAULA BOUTIS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Connellys appealed a decision of the Committee of Adjustment ("Committee") authorizing a Consent Application for property located at 1190-1200 Lorne Park Road ("Subject Property").

[2] The result of this Consent Application would be to provisionally create three conveyed lots with frontage on Garden Road. The retained lot would have frontage onto Lorne Park Road.

[3] At the outset of the hearing, the Tribunal confirmed party status for Andrew Davies. Mr. Davies had previously been granted party status by the Tribunal in connection with a motion brought by the Connellys to consolidate this matter with other appeals related to the Subject Property. The Tribunal had also granted party status to

the City of Mississauga (“City”) in connection with that motion. The Tribunal denied the motion. The City then advised by letter that it would withdraw from these proceedings as a party (Exhibit 1, Tab 14).

[4] No one else sought either participant or party status.

[5] The Subject Property is an irregularly shaped former church property, forming a triangular point at the southeast corner of Lorne Park Road and Garden Road. The church itself is vacant. A small house is also on the property, which house was originally the manse for the church. It is currently occupied. The entire parcel of land is approximately 0.5 hectares or 1.3 acres.

[6] The back portion of the Subject Property currently abuts both Mr. Davies’s lot (creating side yard and rear yard conditions) and the Connellys’s lot (creating a side yard condition).

[7] Mr. Davies’ property, located at 1183 Garden Road, was severed out of the original church lot. Mr. Davies’ lot is about half the depth of the Connellys’ lot, which lot is immediately to the south of his lot. The Connellys reside at 1173 Garden Road, being two lots to the south of the Subject Property, and the depth of their lot is the same depth as the Subject Property. A commercial property lies to the east and abuts the rear of both the Subject Property and the Connellys’ lot.

[8] At the hearing, the Applicant proffered Nick Pileggi as an expert witness. The Appellants and Mr. Davies proffered John Lohmus as an expert witness. The Tribunal qualified each of them to give opinion evidence in the area of land use planning.

[9] The Tribunal, after careful consideration, concludes it must dismiss the appeal. It gives the provisional consents subject to the conditions imposed, in accordance with the decision of the Committee (Exhibit 1, Tab 11).

PROPOSAL

[10] Initially, the lands to be conveyed through the Consent Application were part of a single zoning by-law amendment application ("ZBLA") and an official plan amendment application ("OPA") for the entire parcel of lands.

[11] Ultimately, following staff comments, the Applicant revised its application and proceeded with a separate Consent Application for three single detached lots to front Garden Avenue, in which no amendments were sought or required to the zoning by-law. No construction was proposed as part of the Consent Application, which application was received May 15, 2018.

[12] The Consent Application was the subject of a positive staff report and the Committee approved the application on June 28, 2018. This was then appealed by the Connellys.

[13] The Consent Application would allow for three conveyed lots as follows:

a. Part 2, a largely triangular corner lot at Garden Road and Lorne Park Road. It will have 30.89 metres ("m") frontage onto Garden Road and 38.99 m along Lorne Park Road, with a total area of 810 square metres ("sq m").

b. Part 3, a rectangular lot to the south of Part 2, will have 22.50 m frontage onto Garden Road and a lot depth of 31.59 m, with a total area of 711.9 sq m.

c. Part 4, a rectangular lot to the south of Part 3, will also have 22.50 m frontage onto Garden Road and a lot depth of 31.53 m, with a total area of 709.9 sq m.

[14] The Part 1 lot is for the purposes of a daylight triangle with dimensions of 7.5 m (Garden Road) by 7.5 m (Lorne Park Road) by 6.42 m at the corner tip of Garden Road and Lorne Park Road.

[15] Part 5 constitutes the retained lands, which are the subject of the ZBLA and OPA applications proceeding separately (Case File No. PL171169, to be heard beginning May 27, 2019).

[16] The Part 5 retained lot would have 62.03 m frontage onto Lorne Park Road and share a lot line with the commercial plaza to the east. This portion of the lands would continue to abut the backyard of Mr. Davies' property and similarly continue the side yard condition with the Connellys' property.

[17] The three conveyed lots combined are about 0.22 ha, leaving the retained lands of 0.28 ha.

EVIDENCE AND ANALYSIS

Issues

Planning Act Obligations

[18] The *Planning Act* ("Act") places several obligations on the Tribunal when it makes a decision.

[19] The Act requires that every decision of the Tribunal be consistent with the Provincial Policy Statement, 2014 ("PPS"). It also requires that every decision of the Tribunal conform to the Growth Plan for the Greater Golden Horseshoe, 2017 ("2017 Growth Plan"), where applicable.

[20] Under s. 2, the Tribunal must have regard to matters of provincial interest, including the orderly development of safe and healthy communities and the adequate provision of a full range of housing. These broad issues are further captured within the PPS and the 2017 Growth Plan.

[21] For consent applications that do not require a draft plan of subdivision, the proposal must have regard to various matters enumerated under s. 51(24) of the Act. These include, among other things, s. 2 matters referenced above, regard to whether the plan conforms to the official plan, the suitability of the land for the purposes for which it is to be subdivided, and the dimensions and shapes of the lots. Reasonable conditions may be imposed under s. 51(25) of the Act.

[22] Regarding official plan policy, the applicable official plans are the Regional Municipality of Peel ("Region") Official Plan ("Regional OP" or "ROP") and the Mississauga Official Plan ("City OP"). Within the City OP, there are specific neighbourhood character area policies that apply for Clarkson-Lorne Park, the neighbourhood within which the Subject Property lies.

Site Context and Planning Framework

[23] The Subject Property is bounded by the Queen Elizabeth Way to the north and train tracks to the south, with Lakeshore Road West and Lake Ontario south of the tracks.

[24] Under the ROP, the Subject Property is located within the Urban System. It is located within lands designated Neighbourhood in the City's OP and further, it is designated Residential Low Density I. It is surrounded to the north, west and south by Residential Low Density I lands and largely by single detached housing, with one exception. Specifically, that exception is to the north under "Special Site Policies" for Site 1 (which policies apply to the Subject Property), under Policy 16.5.5.1.

[25] A portion of the Site 1 lands are demarcated as “A”. These lands “may only be developed for detached, semi-detached and townhouse dwellings for a combination thereof, up to a maximum density of 19 units net residential hectare.” At that location, which is to the east and on the opposite side of Lorne Park Road from the Subject Property, there are townhouses and semi-detached homes at 1199, 1195 and 1191 Lorne Park Avenue. There is an internal road at that location with some of the dwellings located at the back, away from Lorne Park Road.

[26] To the immediate east of the Subject Property, the lands are designated Residential Medium Density, though they are currently used for a commercial plaza.

[27] Under Zoning By-law No. 0225-2007 (“ZBL”), the lands are zoned R2-4. This permits detached dwellings. Corner lots are required to have an area of 810 sq m. Interior lots are required to have an area of 695 sq m. The exception (-4) alters the frontage to 22.5 m from the 18.0 m standard. Other standards are amended in accordance with s. 4.2.3 of the ZBL, being R2 Infill Exception Regulations. As noted, no variances are sought in connection with the Consent Application.

Official Plan – Regional OP, City OP and Clarkson-Lorne Park Policies

Policies relating to Tree Preservation

[28] A main issue for the Appellants and Mr. Davies at the hearing related to the preservation of mature trees. In addition to trees on the Subject Property, there are trees off site that are immediately adjacent to the property lines abutting the Subject Property.

[29] During the hearing, Mr. Lohmus took the Tribunal to Regional and City OP policies related to the urban forest and the protection of it. For example, the Regional

OP refers to the Region working jointly with agencies and municipalities to maintain and enhance the urban forest.

[30] The City's OP under Policy 9.2.2.3 regarding Non-Intensification Areas indicates that "while new development need not mirror existing development, new development in neighbourhoods will…f) preserve mature high quality trees and ensure the replacement of the tree canopy."

[31] At Policy 16.5.3.1, the City's OP indicates that "sites with mature trees will be subject to a review of a tree preservation plan prior to consideration of proposed development."

[32] Another example is Policy 6.3.42, which indicates that "Mississauga will protect, enhance, restore and expand the Urban Forest. This will be achieved by the following: … e) ensuring development and site alteration will not have *negative impacts* on the Urban Forest."

[33] Policy 6.3.44 indicates that

> Development and site alteration will demonstrate there will be no negative impacts to the Urban Forest. An arborist report and tree inventory that demonstrates tree preservation and protection both pre and post construction, and where preservation of some trees is not feasible, identifies opportunities for replacement, will be prepared to the satisfaction of the City in compliance with the City's tree permit by-law. (emphasis added)

[34] "Negative impacts" are defined in part as "…no net loss to the existing canopy cover. Replacement canopy cover will be evaluated based on the potential canopy cover into the future (e.g. 10 to 20 years) assuming normal growth of planted stock".

[35] Mr. Lohmus also introduced the Applicant's arborist report (Exhibit 3A, Tab 6, dated July 21, 2017) and the concept plan (specifically a Vegetation Management Plan) provided for in connection with an earlier iteration of the Applicant's application when

the entire site was under consideration (Exhibit 3B, Tab 36, “Concept Plan”). The Concept Plan shows that along the Davies’ lot line, a few trees on Mr. Davies’ property line appear to have a tree protection zone that would, on an “as-of-right build” at that location, be impacted (Exhibit 3B, Tab 36, revision date June 23, 2017).

[36] Mr. Andres objected to the urban forest policies as irrelevant. He indicated that the proposal did not have any construction proposal associated with it, allowing for an evaluation of how trees on the Subject Property, or adjacent to it, might be affected. He did not deny that upon construction some trees would be impacted/removed and a plan would be required as part of site plan control.

[37] Mr. Andres also objected to the introduction of both the arborist’s report and the Concept Plan, as the City did not require these in connection with the Consent Application.

[38] The Tribunal did allow these documents in, but ultimately concludes that until a proposal comes forward at site plan for construction on each of the newly created lots, whenever that may be, the impact on trees and the urban forest cannot be properly evaluated in accordance with the applicable official plan policies. “Development” has a specific meaning under the site plan provisions of the Act (s. 41), which requires actual construction, and this definition is carried forward in the City’s site plan control by-law.

[39] This is not to say that the official plan policies that are concerned with the urban forest are completely irrelevant at the consent stage, which creates new lots. Under the PPS, the creation of new lots is included in the definition of “development”. However, the City has a comprehensive approach to the preservation of the urban forest. The policies themselves do not prohibit the potential or actual loss of trees in these circumstances. The policies themselves recognize the tree canopy may need replacement.

[40] Further, the Tribunal has no reason to believe that if a proposal to construct a home or homes came forward that it will not be managed at the site plan control stage

so as to preserve trees in accordance with the policies and the tree by-law. Indeed, Mr. Lohmus demonstrated just that has occurred by tendering a site plan application that achieved that goal in the context of another nearby development (Exhibit 3B, Tab 24).

[41] In cross-examination, Mr. Lohmus indicated his purpose for tendering that site plan was to indicate that larger lots create greater opportunities to retain mature trees. He had provided a conceptual plan for comparison at the hearing that contemplated a consent proposal that creates one additional lot rather than two (two-lot plan versus three-lot plan proposed). He posited that having two lots rather than three would mean more opportunity to preserve trees. This may or may not be the case, depending on how homes are proposed to be built and because lot coverage of course is a percentage of the lot area. Therefore, a larger lot means ultimately a greater area can be built upon that lot.

[42] The main concern of the Connellys and Mr. Davies appeared to be that site plan control is not a process which they can have legal rights of participation in, i.e. they cannot appeal a site plan they are dissatisfied with, and this is their only place to engage these policies and concerns. The Tribunal understands this concern, but it is the Act which determines to what degree and how third parties will be able to participate in planning decisions and which policies are most applicable at which stage. In addition, both planners agreed that residents are typically welcome to participate in the site planning process to address their concerns. The Tribunal has no reason to believe it would not be the case here.

[43] The Tribunal does accept the general proposition as posited by the Connellys and Mr. Davies that the character of the community includes the existence of mature trees. However, ultimately, the Tribunal concludes that the potential loss of trees in the future similarly cannot easily be addressed in the absence of an actual construction plan. It is clear some trees will be lost, but that is not prohibited under the City’s OP.

[44] As a result, the Tribunal concludes the OP policies referenced by Mr. Lohmus in respect of the urban forest do not have significant bearing on the Tribunal's determinations for the purposes of the Consent Application in the absence of a construction plan. The consent permission by itself does not result in the loss of trees that can be clearly identified or evaluated against the relevant policies or in the context of the tree by-law.

[45] The Tribunal did entertain submissions regarding potential conditions to the provisional consent to address the adjacent trees on Mr. Davies' lot. Mr. Flett suggested an easement be imposed for the Tree Protection Zone by way of condition on the granting of the consent so as to prevent excavation within it. This would only apply to the provisionally created new lot immediately abutting Mr. Davies' lot (Part 4).

[46] In response to this, Mr. Andres indicated that in effect what was requested was not an easement, but a restrictive covenant and the Tribunal had no jurisdiction to do that, as that requires permission under the Act. And in any event, he considered it an unreasonable and unworkable condition for the stage of a provisional consent, as compared to, for example, a minor variance application connected to particular construction plans.

[47] In light of the overall framework in place, the Tribunal does not ultimately see a condition as necessary, assuming such a condition is even permissible. When or if site plan proposals come forward in the context of a proposal to build a new home on the Part 4 lot, the Tribunal encourages Mr. Davies to speak with the City to address concerns he may have regarding his trees should it appear that any of his trees may be at risk.

Character and Intensification Policies

Regional OP

[48] Mr. Pileggi characterized the proposal as constituting “gentle intensification”.

[49] Mr. Pileggi referred to the following general ROP policy: 5.5.2.2, which directs “a significant portion of new growth to the built-up areas of the community through intensification.”

[50] ROP Policy 5.5.3.2.2 seeks to facilitate and promote intensification.

[51] ROP Policy 5.5.3.2.3 seeks to “accommodate intensification in urban growth centres, intensification corridors, nodes and major transit station areas and any other appropriate areas within the built-up area.”

[52] The ROP at Policy 5.5.3.2.9 indicates that municipalities are to identify in their official plans the appropriate type and scale of development and intensification areas.

[53] It was common ground at the hearing that this application would have to be demonstrated to be intensification within the category of “any other appropriate areas within the built-up area” in respect of Policy 5.5.3.2.3.

[54] Mr. Pileggi concluded that the proposal conformed to the ROP.

[55] Mr. Lohmus indicated that under Policy 5.5.3.1.1 the proposal assists with a more compact and efficient urban form compared to what is currently there; regarding 5.4.3.1.2, the proposal does optimize the use of existing infrastructure and services; and under Policy 5.5.1.3.4, it does intensify development on underused lands.

[56] However, Mr. Lohmus' opinion was that the proposal does not, pursuant to Policy 5.5.3.1.3, revitalize or enhance the developed area. He indicated that Policy 5.5.3.1.8 recognizes that you can have a diversity of residential uses within the region so that all sites do not have to be the subject of intensification. In his opinion, this area did not constitute an appropriate area for intensification as Policy 5.5.3.2.3 would contemplate. It was his opinion that the proposal did not conform to the ROP.

[57] Mr. Lohmus' opinion that it did not revitalize or enhance the developed area was difficult to understand. While indicating that this area should not be the subject of intensification, he, as noted earlier, also provided a competing concept plan of a single additional lot rather than two, which is still intensification. Ultimately, the Tribunal infers his opinion regarding a failure to revitalize or enhance the developed area was largely based on the issue of tree preservation, which the Tribunal has addressed above.

[58] On the question more generally about whether this constitutes an appropriate area within the built up area for intensification, the Tribunal concludes the gentle intensification proposed here is supportable under the City's OP, under the PPS and the 2017 Growth Plan, which is discussed later in these reasons.

[59] As a result, the Tribunal concludes that the proposal has regard to conformity with the ROP.

City OP

[60] Mr. Pileggi first reviewed the "Neighbourhoods" policies at 5.3.5 with the Tribunal. He noted the preamble, which reflects that these areas are physically stable with a character that is to be protected. Further, these areas are

> [N]ot appropriate areas for significant intensification. This does not mean that they will remain static or that new development must imitate previous development patterns, but rather than when development does occur it should be sensitive to the Neighbourhood's existing and planned character.

[61] Policy 5.3.5.5 indicates that intensification may be considered where it is compatible with built form and scale to surrounding development and enhances the existing or planned development, consistent with the OP.

[62] Policy 5.3.5.6 indicates that development will be sensitive to the existing and planned context and include appropriate transitions in use, built form, density and scale.

[63] Policy 9.2.2.3 addresses new development. Already addressed was policy f) regarding the “preservation of mature high quality trees”. The remainder of the sub-policies address lotting patterns, the continuity of front, rear and side yard setbacks; the scale and character of the surrounding area; minimization of overlook and overshadowing on adjacent neighbours; stormwater best management practices; and design which respects the existing scale, massing, character and grades of the surrounding areas.

[64] In the context of the Consent Application, without any construction proposal and no variances, the Tribunal concludes the key issue is the lotting fabric. As a general proposition that is rectangular lots in the area, subject to the townhouse development discussed earlier and referenced in the Site 1 policies. Also influencing lotting fabric is the road pattern itself at the Subject Site, which intersects at an angle because of the road alignment creating a point; and because the Subject Site itself is a former irregularly shaped church site, made more irregular by the severance which created Mr. Davies’ lot.

[65] Given that the site area itself is irregularly shaped, the proposal reflects one irregularly shaped lot at the southeast corner and two rectangular lots to the south of that, which two are essentially the same area, frontage and depth.

[66] The Clarkson-Lorne Park character area policies (under 16.5) apply. Mr. Pileggi indicated that the general site plan policies at 9.5.2 and those specific to the character area, 16.5.1, are best addressed at site plan when buildings are proposed. For

example, 16.5.1.4 f) indicates that the “design of the building should de-emphasize height of the house…”. This is not an issue on this application.

[67] Ultimately, the key character policy that the Tribunal concludes this proposal turns on is 16.1.2.1:

> To preserve the character of lands designated Residential Low Density I … the minimum frontage and area of new lots created by land division …. will generally represent the greater of:
>
> a. The average frontage and area of residential lots … on both sides of the same street within 120 m of the subject property. In the case of corner development lots, units … on both streets within 120 m will be considered.
>
> or
>
> b. the requirements of the Zoning By-Law.

[68] The proposal meets the requirements of the ZBL, but these are less than the calculated averages. As a result, policy (a) is to be considered as the “governing” sub-section.

[69] In this context, the Tribunal notes the requirements under s. 51(24), require having regard to various enumerated issues, including conformity with official plan policies. This is not the same as requiring conformity with them.

[70] In addition, the policy itself indicates “generally represent the greater of”. “Generally” is not “always”.

[71] Both planners undertook, as required, a review of the lot frontages and areas within the 120 m as required. But for a couple of slight differences in approach, their results were not significantly different. Mr. Pileggi concluded that the average frontage was 25.2 m and the average area was 1,557.20 sq m. Mr. Lohmus concluded the average frontage was 26.86 m and the average lot area was 1,533.99 sq m.

[72] In the context of this proposal, frontages would be 30.89 m, 22.5 m and 22.5 m, meeting the ZBL requirements, but in two cases would be under the averages, however calculated. The lot areas are 810 sq m, 712 sq m and 710 sq m, each below the lot area averages, but meeting ZBL requirements.

[73] This policy is drafted for entire areas that are captured by the Residential Low Density I category. The Tribunal is of the view that the policy has to be applied in light of the proposal's context, which is that of a former church site that is irregularly shaped. Further, the Tribunal is also of the view that the OP language must read in conjunction with the most recent provincial directives: these came into force subsequent to the City OP's initial adoption and these directives steadily direct us to greater efficiency and intensification of the land base.

[74] Mr. Lohmus, as noted earlier, offered a second concept of two lots instead of three, which he felt would meet the policies better. But as noted on cross-examination, these would result in the largest lots in the area, and more oddly shaped lots, than those put forward by this proposal. In terms of the shape, Mr. Lohmus commented his purpose was to "achieve maximum growing area for mature trees."

[75] The two lots proposed would have frontages of 37.95 m on Garden Road, which is larger than any other lot on Garden Road and 10 m greater than the average. The largest is 30.5 m. It is accurate that the policy speaks to "minimums" in terms of averages, but in terms of character, it was put to Mr. Lohmus in cross-examination that lots which are significantly larger than the average could also be said to be out of character; though Mr. Lohmus did not agree with that, he did agree that a 10 m differential was very large. Certainly, they would fail to respond to provincial directives on the more efficient use of lands within the built boundary.

[76] The residual parcel on Mr. Lohmus' concept would have 43.32 m frontage on Lorne Park Road, which is considerably larger than the average frontage in the area. On cross-examination, Mr. Lohmus also indicated he would not support a severance of

that parcel because it would not achieve the average frontage within 120 of the Subject Property.

[77] Ultimately, the Tribunal must seek to interpret policies not only as they may broadly be read, but their appropriateness in light of site-specific context and provincial imperatives. A two-lot configuration – put to the Tribunal as a comparator - rather than a three-lot configuration would not seem to address the overall policy framework as best as it could.

[78] The Tribunal therefore concludes that the proposal not only has regard to conformity with the City's OP as a whole, but also with this particular policy, which it itself acknowledges it is a policy to be "generally" applied. The City Staff report – brief though it was – also concluded that the proposal was compatible with the surrounding area.

Provincial Matters – PPS and the 2017 Growth Plan

[79] Mr. Pileggi referenced the following PPS policies:

a. 1.1.1 a), which seeks to ensure healthy, liveable and safe communities sustained by promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over time;

b. 1.1.2, which indicates sufficient land shall be made available to accommodate an appropriate range and mix of land uses. It further indicates that within settlement areas, of which this is one, that sufficient land will be made available through intensification and redevelopment and, if necessary, designated growth areas.

c. 1.1.3.1, which indicates that settlement areas shall be the focus of growth and development.

d. 1.1.3.2, which indicates that land use patterns shall be based on a number of things.

    i. Densities and a mix of land uses which

        1. Efficiently use land and resources;

        2. Are appropriate for, and efficiently use, the infrastructure and public service facilities that are planned and available, and which avoid the need for their unjustified and/or uneconomical expansion;

        3. Minimize negative impacts to air quality and climate change, and promote energy efficiency;

        4. Support active transportation;

        5. Are transit-supportive, where transit is planned, exists or may be developed; and

        6. Are freight-supportive.

    ii. A range of uses and opportunities for intensification and redevelopment in accordance with policy 1.1.3.3, where this can be accommodated.

e. 1.1.3.4, which indicates that appropriate development standards should be promoted to facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety.

f. 1.4.3 c), d) and e). These address directing development of new housing towards locations where appropriate levels of infrastructure and public service facilities are or will be available; promoting densities for new housing which

> efficiently use land, resources, infrastructure and public service facilities, and support the use of active transportation and transit where it exists or is to be developed; and establishing development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety.

[80] Mr. Pileggi did not address Policy 1.1.3.3 in his evidence, though Mr. Lohmus did. This policy requires that planning authorities identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated, taking into account existing building stock or areas and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

[81] While it was Mr. Pileggi's view that the proposal was consistent with the PPS and conformed to the 2017 Growth Plan, Mr. Lohmus indicated it did not, primarily on the basis that three-lot proposal was inappropriate for the location.

[82] Much of Mr. Lohmus' opinion on the PPS revolved around the ability to preserve more trees, previously addressed, which in his opinion made a two-lot proposal more appropriate than a three-lot proposal.

[83] Mr. Lohmus referenced Policy 1.1.1(c), which "avoids development and land use patterns which may cause environmental or public health concerns" and Policy 1.7.1(j), which requires minimizing negative impacts from changing climate and considering the ecological benefits provided by nature. He suggested the three-lot proposal was off-side Policy 1.6.6.7(d), regarding storm water management, which seeks to "maximize the extent and function of vegetative and pervious surfaces". He also referenced Policy 1.8.1(f)(1) which seeks to support energy, conservation and efficiency, improved air quality, reduced greenhouse gas emissions, and climate change adaptation through

land use patterns that promote design and orientation to maximize energy efficiency and conservation, and considers the mitigating effects of vegetation.

[84] He indicated that intensification was not contemplated for this area and that no transit “exists or is planned”. Therefore, the size of the lots he proposed were preferable as these would be “consistent with the average in the area [would be] appropriate”.

[85] Mr. Lohmus contemplated that the proposal did not take into account the existing building stock, as Policy 1.4.3(b) would require. The policy indicates a requirement for an appropriate range and mix of housing types and densities for the regional market area by “permitting and facilitating all forms of housing required to meet the social, health and well-being requirements of current and future needs” and “all forms residential intensification … in accordance with policy 1.1.3.3”. The Tribunal is unclear how a two-lot proposal would better facilitate this than a three-lot proposal, when both the proposals contemplate detached dwellings.

[86] In respect of the 2017 Growth Plan, Policy 2.2.1.2 directs growth to settlement areas focused in specified areas, including delineated built-up areas, of which the Subject Property is within. It also speaks to complete communities in Policy 2.2.1.4. This particular proposal does not strongly contribute to that particular goal.

[87] Under Policy 2.2.2.4, the 2017 Growth Plan speaks more directly to intensification being encouraged generally to achieve the desired urban structure and to identifying the appropriate type and scale of development.

[88] It was common ground at the hearing that this Subject Property does not constitute an “intensification area”, unlike in the context of growth centres, for example. But the PPS and the 2017 Growth Plan do in fact contemplate intensification everywhere in the built-up area: it is really a matter to what degree and what is appropriate in any given location, in accordance with the local policies.

[89] While this proposal will be more compact than the existing one house situation, it is still not “compact form” as one might envision, for example, with townhouses or walk up apartments. The homes that may be built on these lots sometime in the future would still be generously sized homes on generously sized lots. But in their context, Mr. Lohmus agreed with the Applicant’s planner that these would represent compact form, which is consistent with the provincial expectations at this point in our planning framework.

[90] This area is not in a “higher order” transit area, but it is serviced by transit. The nearest GO Station (Clarkson) is approximately a three kilometre (“km”) walk to the west, with the next nearest being the Port Credit GO Station to the east. The Tribunal understood the nearest frequent bus route is about 1 km away. The Tribunal also understood that a closer neighbourhood area bus travels east-west during the weekdays.

[91] As was conceded by Mr. Pileggi on cross-examination, the area is not a prime location for active transportation, though there is a sidewalk on Lorne Park Road and a significantly sized commercial plaza is within very easy walking distance from the Subject Property, providing for access to amenities and services quite close by. In addition, people can ride their bikes along the area network of roads as Mr. Pileggi noted. The Tribunal observes it would not be a very long bike ride to either of the area GO stations, for example.

[92] In totality, the Tribunal concludes the proposal is both consistent with the PPS and conforms to the 2017 Growth Plan. The Subject Property is a large irregularly shaped parcel that no longer serves the church function it once served. Its redevelopment into the proposed three lots for the conveyed lands is an appropriate degree of intensification fronting Garden Road.

***Consent Provisions – Summary regarding s. 51(24) of the* Act**

[93] Under s. 51(24) of the Act, the Tribunal must be satisfied that the proposal has regard to a number of items, including the health, safety and convenience of the present and future inhabitants, and to various other itemized matters, including conformity with official plans.

[94] Mr. Pileggi indicated that in his opinion these conditions had been satisfied in conjunction with the conditions imposed by the Committee. Reasonable conditions may be imposed under s. 51(25) of the Act.

[95] These matters include s. 2 of the Act, which references broadly based interests, and which are further elaborated upon in the PPS and 2017 Growth Plan. In light of the Tribunal's conclusions regarding the PPS and 2017 Growth Plan, and the applicable official plan policies, the Tribunal concludes that the proposal has regard to the s. 2 items and concurs with the opinion of Mr. Pileggi in this regard.

[96] Mr. Pileggi further indicated that the proposal was in the public interest and not premature: the Subject Property is of a sufficient size to be developed for the proposed use and the remaining parcel will be of a sufficient size for future redevelopment. He indicated it had regard to conformity with the official plan policies, and the Tribunal similarly concludes.

[97] Other items that he indicated were regarded to include the suitability of the land for its proposed use, the existing road system, the dimensions and shapes of the lots, municipal services, and the availability of school sites, with site plan still to follow.

[98] There was no fundamental disagreement between the parties on the availability of services or road networks. The major difference of opinion revolved around the

frontage and area of the lots, and primarily this was in connection with the idea of tree preservation. The Tribunal concluded that this is best addressed at the site plan stage, as previously described.

[99] The Tribunal therefore concludes that the proposal has regard to s. 51(24) of the Act as required.

ORDER

[100] The appeal is dismissed. The provisional consents are to be given subject to the conditions also provided for, in accordance with the Committee's decisions found at Exhibit 1, Tab 11.

"Paula Boutis"

PAULA BOUTIS
MEMBER