

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



ISSUE DATE: December 02, 2019

CASE NO(S): PL190056

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

Appellant:	Lakewood Beach Community Council
Subject:	By-law No. BL 19-014
Municipality:	City of Hamilton
LPAT Case No.:	PL190056
LPAT File No.:	PL190056
LPAT Case Name:	Lakewood Beach Community Council v. Hamilton (City)

Heard: November 8, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel/Representative*

Lakewood Beach Community Council

Vivian Saunders*

City of Hamilton

Patrick MacDonald

Silvestri Homes

Scott Snider and Anna Toumanians

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
NOVEMBER 8, 2019 AND ORDER OF THE BOARD**

[1] On February 21, 2019, the Lakewood Beach Community Council (“Appellant”) appealed under s. 34(19) of the *Planning Act* (“Act”) the passage by the City of Hamilton (“City”) Council of Zoning By-law No. 19-014. The by-law is a site-specific Zoning By-law Amendment affecting the lands located at 560 Grays Road.

[2] On September 9, 2019, the Tribunal held a Telephone Conference Call (“TCC”) at which Silvestri Homes was granted Party status and a Case Management Conference (“CMC”) was scheduled for November 8, 2019 to be held by TCC. The Tribunal directed that given recent legislative changes to the adjudicative process for *Planning Act* appeals, if the Appellant wished to file a new notice of appeal in accordance with s. 34(19) of the *Planning Act* as it reads on and after September 3, 2019, it do so by October 1, 2019. This is permitted under s. 30(2) of Ontario Regulation No. 296/19.

[3] The Appellant elected not to file a new notice of appeal.

[4] At the November 8 CMC, the Parties made submissions regarding a draft Procedural Order and Issues List for this proceeding, which they had filed prior to the CMC. The Tribunal provided directions regarding the contents of these materials. The Parties requested that a four-day hearing be scheduled.

[5] On November 11, 2019, the Parties filed a revised draft Procedural Order and Issues List, which the Tribunal has reviewed. On November 14, 2019, the Tribunal scheduled hearing dates.

ORDER

[6] The Tribunal directs that the hearing of the appeal will commence on **Tuesday, May 5, 2020, at 10 a.m.** The hearing will be held at:

**City of Hamilton
Hearing Room 101
50 Main Street East
Hamilton, ON L8N 1E9**

[7] The Tribunal approves the Procedural Order and Issues List attached as Attachment 1 to this Decision.

[8] There will be no further notice.

[9] This Member is not seized.

"Hugh S. Wilkins"

HUGH S. WILKINS
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

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ATTACHMENT 1



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

ISSUE DATE: December 02, 2019

CASE NO(S): PL190056

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant(s)/Appellant(s): Lakewood Beach Community Council
Subject: By-law No. BL 19-014
Property Address/Description: 560 Grays Road, Hamilton Ontario
Municipality: City of Hamilton
Municipal File No.: BL19-014
LPAT Case No.: PL190056
LPAT File No.: PL190056
LPAT Case Name: Lakewood Beach Community Council v. Hamilton (City)

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.

Organization of the Hearing

2. The hearing will begin on **May 5, 2020 at 10:00 a.m. at Hearing Room 101, 50 Main Street East, Hamilton ON. L8N 1E9** in the City of Hamilton.
3. The length of the hearing will be **four [4]** days.
4. The parties and participants identified at the prehearing conference are:
 - Appellant: Lakewood Beach Community Council
 - Respondent: Silvestri Homes
City of Hamilton
 - Participants: N/A
5. The Issues for the hearing are set out in the Issues List attached as Attachment 2 to this Order. With the exception of the elimination or reduction of issues, there will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. The order of evidence for the hearing is listed in Attachment 3 to this Order.
7. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

8. Expert witnesses in the same field, if any, shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing and provide this list to all of the parties.
9. A list of remaining issues shall be filed with the Tribunal on or before **February 5, 2020**. In the event of any dispute with respect to this list, the Tribunal may be spoken to.
10. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **January 6, 2020**.
11. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as 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. For greater certainty, each witness statement shall contain:
 - (a) an executed acknowledgment of expert's duty form (attached to these Rules) and expert's qualifications;
 - (b) the issues the expert will address, their opinions on these issues, the reasons that support their opinions and their conclusions; and
 - (c) a list of the reports or documents, whether prepared by the expert or by someone else, that the expert will refer to at the hearing. The expert's complete report may be filed instead of this statement if it contains the required information.

12. 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].
13. On or before **March 6, 2020**, the parties shall provide copies of their witness and expert witness statements to the other parties.
14. Any other witness and/or participant must provide to the Tribunal and the parties a witness and/or participant statement on or before **March 6, 2020**, or the witness or participant may not give oral evidence at the hearing.
15. On or before **April 28, 2020** before the hearing, 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.
16. Parties may provide to all other parties a written response to any written evidence on or before **April 6, 2020**.
17. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.

(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)
18. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least **seven (7) calendar days** before the hearing that the written evidence is not part of their record.
19. Documents may be delivered by personal delivery, facsimile or registered or certified mail, email, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7.13) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. 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.

BEFORE:

Name of Member)
)
)

Date:

TRIBUNAL REGISTRAR

ATTACHMENT 1 TO PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

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/tribunals/lpat/legislation-and-rules/>

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 2 TO PROCEDURAL ORDER

ISSUES LIST

Note: The identification of an issue on this list does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for 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.

1. Is the zoning by-law amendment consistent with the Provincial Policy Statement's directives, limitations and/or prohibitions set out in the section below?

- Principle

- 1.1.1, 1.1.2,, 1.1.3.2 a), 1.1.3.3, 1.1.3.5, 1.1.3.7

- 1.2.4 d), 1.2.5

- 1.3.1 d), 1.3.2.3

- 1.4.3 b) c) d)

- 1.6.1, 1.6.6.7, 1.6.7.2, 1.6.7.5, 1.6.8.1, 1.6.8.2, 1.6.8.3

- 1.8.1 b) e)

- 2.1.1

- 2.2.1 g) h)

- 3.0

- 3.1.1 a), 3.1.2 a) b) c) d), 3.1.3

- 4.8

- 4.9

2. Does the zoning by-law amendment sufficiently give full consideration to the applicable policies of the Growth Plan and should the decision by the Tribunal consider their importance in assessing conformity with the following policies? In particular the following policies:

- Vision

- 1.2.1 Guiding Principles

- 1.2.2 Legislative Authority

- 2.1 Where and How to Grow: Context

- 2.2.1 Managing Growth

3. Should the Tribunal consider the attributes of the subject lands and the immediate area when assessing conformity/non-conformity with the policies of the Urban Hamilton Official Plan? In particular, but not limited to, the following:

- lack of public transit
- lack of safe alternative modes of transportation
- lack of accessibility
- increase of vehicle traffic to an already congested, unsafe and inferior network
- lack of supporting land uses to serve the local residents
- lack of supporting local infrastructure/amenities.

4. Does a balanced evaluation of the Urban Hamilton Official Plan support the zoning by-law amendment? In particular the following policies:

(Urban Land Use) E.3.2.1, E.3.2.3,

(Scale) E.3.6.6;

(High Density Residential) E.3.6.4; E.3.6.5; E.3.6.7;

(Residential Intensification) E.3.2.4; B.2.4.1.4 (a) (b) (d) (e) (f) (g); B.2.4.2.2 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j);

(Design) B.3.3.2.3 (a) (b) (f) (g); B.3.3.2.6 (e); B.3.3.3.2 (a) (b) (c);

(Servicing – Stormwater) C.5.4; F.3.1.5.1

(Watershed and Sub-Watershed Plans & Environmental Impact Statements): F.3.1.6 (a) (b) (c) (d); F.3.1.6.2; F.3.2.1.2;

(Municipal Land) F.4.2; F.4.2.1; F.4.2.2; F.1.19.1; F.1.18.1 (iii)(v) (viii)

(Land Use Compatibility) F.1.19;

(Parkland) F.1.18.1

(Community Benefits) F.1.9; F.1.9.1; F.1.9.2;

(Transportation) F.3.1.8.1; F.3.1.8.5;

(Secondary Plans & Neighbourhood Plans) F.1.2.7; F.1.2.8; F.1.1.3; F.1.1.4 (a) (b)

(Public Consultation Strategy) 3.2.10.1;

(Air Quality) F.3.4.5.1;

(Zoning By-Law) F.1.5;

(Overall Intensification Targets for the City) A 2.3.3.4

5. Does the proposed zoning by-law amendment (RM3-58 with further modifications) sufficiently regulate matters of parking requirements, noise, accessibility, safety as well as built form including height, density and setbacks?
6. Did the Transportation Impact Study and Transportation Demand Management Report submitted in support of the application contain inaccurate or insufficient data such that their conclusions should not be accepted by the Tribunal?
7. Did the public process before City Council in this matter properly follow *Planning Act* requirements?
8. In the event that the Tribunal allows the appeal in whole or in part, should a “H” symbol or holding provision be incorporated into the zoning for the subject land and if so, what conditions should be included in such a holding provision?
9. Should a Decision by the Tribunal for a change in land-use have regard for a zoning by-law amendment that will exacerbate identifiable issues under the Provincial Policy Statements, Growth Plan and/or Urban Hamilton Official Plan?

ATTACHMENT 3 TO PROCEDURAL ORDER

ORDER OF EVIDENCE

1. Silvestri Homes (non-opinion overview of application)
2. Lakewood Beach Community Council
3. Silvestri Homes
4. City of Hamilton