

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



ISSUE DATE: March 31, 2020

CASE NO(S): PL190238

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 (jointly):	Elizabeth Deacon, Julie Donnelly, John Donnelly and others
Applicant:	Ingrid Lane
Subject:	Consent
Property Address/Description:	1219 Ravine Drive
Municipality:	City of Mississauga
Municipal File No.:	B026/19
OMB Case No.:	PL190238
OMB File No.:	PL190238
OMB Case Name:	Deacon v. Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant (jointly):	Rick Gaetz et al
Applicant:	Ingrid Lane
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1219 Ravine Drive
Municipality:	City of Mississauga
Municipal File No.:	A153/19
OMB Case No.:	PL190238
OMB File No.:	PL190240

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant (jointly):	Rick Gaetz et al
Applicant:	Ingrid Lane
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1219 Ravine Drive
Municipality:	City of Mississauga
Municipal File No.:	A152/19
OMB Case No.:	PL190238
OMB File No.:	PL190239

Heard: September 24 and 25, December 9 and 10, 2019 and January 24, 2020 in Mississauga, Ontario

APPEARANCES:

Parties

Rick Gaetz, Barb Underhill, Darko Dubajic, Yvette Posocco-Dubajic, Rob and Kim Pollard, Drew Pallett, Bob Phillips and Elizabeth Deacon, John and Julie Donnelly, Ken and Kimberley Schmidt, Steven Douglas, and Ashleigh Proudfoot

Ingrid Lane

Counsel

L.F. Longo

J. Meader

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

[1] On March 15, 2019, Ingrid Lane (“Applicant”) applied for a Consent to sever and for variances concerning lands located at 1219 Ravine Drive (“subject property”). On May 2, 2019, the City of Mississauga’s (“City”) Committee of Adjustment approved the Consent and variance applications.

[2] On or about May 22, 2019, the following persons appealed the Committee's decision to the Tribunal:

- John and Julie Donnelly;
- Steven Douglas and Ashleigh Proudfoot;
- Darko Dubajic and Yvette Posocco-Dubajic;
- Rick Gaetz and Barb Underhill;
- Drew Pallett;
- Bob Phillips and Elizabeth Deacon;
- Rob and Kim Pollard; and
- Ken and Kimberley Schmidt.

[3] The hearing of the appeal was held in Mississauga in September and December 2019 and in January 2020. At the commencement of the hearing on September 24, 2019, the Tribunal granted Participant status to the following persons, who own property or reside in the general vicinity of the subject property:

- Amarit Dhoot;
- Greg Duncan;
- Eiza Ejaz;
- John Paul Kennedy;
- Zafar Khawaja;
- Joseph Koszo;
- Peter O'Marra;
- Heather Mawhinney;
- Tony Pallante;
- Elaine Partridge; and
- Yulia Weber.

[4] The subject property is designated Residential Low Density I and Greenlands under the City's Official Plan and is zoned Residential (R3-3) with a Greenlands Overlay under the City's Zoning By-law No. 0225-2007 ("Zoning By-law"). It is located in the Clarkson-Lorne Park Neighbourhood Character Area.

[5] The Applicant seeks to sever the subject property into two new proposed lots. The frontage for each proposed lot would be 28 metres ("m"). The proposed retained lot would have a lot area of approximately 1,973 square metres ("m²") and the proposed severed lot would have a lot area of approximately 1,847 m². The Committee of Adjustment approved the Consent subject to the following conditions:

- the Applicant shall enter into an easement agreement with the City for the portion of the severed lands containing a pond and for a 10 m setback from the pond;
- approval of draft reference plans shall be obtained;
- if any City department or external agency determines that an easement or right-of-way is required that was not included in the provisional approval, it may be added prior to the final approval of the application;
- a letter shall be received from the City's Manager of Zoning Plan Examination indicating that the conveyed land and retained lands comply with the provisions of the Zoning By-law, or alternatively, that variances are approved by the appropriate authorities;
- a letter shall be received from the City's Transportation and Works Department indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated April 12, 2019;
- a letter shall be received from the City's Community Services Department, Culture Division indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated March 14, 2019; and,

- a letter shall be received from the City's Parks Planning Section indicating that satisfactory arrangements have been made with respect to the matters addressed in their comments dated March 14, 2019.

[6] The matters addressed in the comments from the City's Transportation and Works Department require that, prior to the issuance of the final Consent, the Applicant prepare and submit an overall servicing plan, an overall grading and drainage plan, a conceptual site plan, a drainage study for the pond on the subject property, and site plan approval. The Community Services Department, Culture Division requires that the Applicant carry out an archeological assessment of the proposed lots and mitigate adverse impacts to any significant archeological resources that are found. The Parks Planning Section requires that the Applicant pay a cash contribution for planting trees along Ravine Drive, provide securities for municipal tree protection during the site plan phase, and make payment of cash-in-lieu for park or other recreational purposes under s. 42 of the *Planning Act*.

[7] The Committee of Adjustment also approved the Applicant's variance applications seeking approval of 28.01 m lot frontages for each proposed lot. The Zoning By-law requires a minimum lot frontage of 30 m.

[8] At the commencement of the hearing, the Applicant requested that the variance applications be amended from requesting frontages of 28.01 m to requesting 28 m of frontage for each proposed lot. Glen Broll, a planner who provided opinion evidence on behalf of the Applicant at the hearing, opined that the proposed amendment to each of the variance applications is appropriate and minor. The requested amendments were not opposed and, based on Mr. Broll's evidence, the Tribunal amended the applications as requested. Under s. 45(18.1.1) of the *Planning Act*, written notice to the persons and public bodies set out in s. 45(5) was not required given the minor nature of the amendments.

ISSUES

[9] Regarding the Consent appeal, the Tribunal must determine whether the proposed Consent is consistent with the Provincial Policy Statement, 2014 (“PPS”), conforms with provincial plans, including A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”), and conforms with the Region of Peel (“Region”) Official Plan and the City’s Official Plan. The Tribunal must also consider whether the proposed Consent has regard to the criteria set out in s. 51(24) of the *Planning Act*.

[10] Regarding the variance appeals, the Tribunal must determine whether or not the proposed variances meet the four tests under s. 45(1) of the *Planning Act*. More specifically, do the proposed variances maintain the general purpose and intent of the Region’s Official Plan and the City’s Official Plan, do they maintain the general purpose and intent of the Zoning By-law, are they desirable for the appropriate use of the subject property, and are they minor? Each of these tests must be satisfied for the proposed variances to be authorized.

EVIDENCE AND SUBMISSIONS

[11] The Tribunal heard opinion evidence on behalf of the Applicant from:

- Glen Broll in the area of land use planning;
- Kayam Ramsewak in the area of water resources engineering; and
- David Stephenson in the areas of terrestrial, wetland and aquatic ecology and arboriculture.

[12] The Tribunal heard opinion evidence on behalf of the Appellants from:

- Ted Davidson in the area of land use planning; and

- Ken Chow in the area of civil engineering with a specialization in water resources.

It also heard fact evidence from Stephen Douglas, Ken Schmidt and Rick Gaetz, each of whom is an appellant.

[13] The Tribunal received written submissions from the Participants Greg Duncan, Eiza Ejaz, Elaine Partridge, Peter O'Marra, Joseph Koszo, Zafar Khawaja, Tony Pallante, and Yulia Weber. The Participants Amarit Dhoot and John Paul Kennedy provided oral submissions in response to questions posed by the Tribunal.

[14] Neither the City nor the Credit Valley Conservation Authority ("Conservation Authority") attended or gave evidence at the hearing.

Applicant's Evidence

Glen Broll

[15] Mr. Broll described the area surrounding the subject property. He stated that the area generally is comprised of large single detached dwellings on large lots. He said the subject property is a corner lot with frontage on two sides along Ravine Drive consisting of 57 m on its north side and 60.5 m on its east side. He said the subject property has an area of 3,820 square m². He said the property slopes southeast down to a pond at its southern end. He stated that the Applicant wishes to divide the subject property north-south into two lots. He stated that the City's planning staff does not object to the proposed Consent or variances.

[16] Mr. Broll stated that the subject property lies outside of the delineated environmental features area of the Conservation Authority. He said it lies close to a nearby valley slope, but that the Conservation Authority has no objections to the

proposed setbacks and building envelopes for future development on the proposed lots. He said the proposed severance preserves the pond on the subject property and provides for sufficient setbacks from it. Conservation Authority approval is required for any development on the proposed lots.

[17] Mr. Broll opined that the proposed Consent and variances are consistent with the PPS. He said the subject property is located in a settlement area and the proposed instruments would facilitate an efficient land use pattern. He said the proposed Consent and variances would not cause environmental or public safety issues and would help provide for a healthy, liveable and safe community. He said the proposed development represents an efficient use of land and infrastructure and provides for appropriate intensification in the area. He said any natural features would be protected.

[18] Mr. Broll opined that the proposed Consent conforms with the Growth Plan. He stated that the subject property is located in a settlement area and within the City's built boundary. He said intensification is encouraged throughout the Growth Plan's built boundary area.

[19] Mr. Broll opined that the proposed Consent conforms with the Region's Official Plan. He stated that the subject property is located within the Region's Urban System in which growth and development are encouraged. He said the Region's Official Plan policy 2.3.2.1 leaves the detailed delineation of the Region's Greenlands Core Areas to area municipalities. He opined that the subject property lies outside of the Greenlands Core Areas.

[20] Mr. Broll opined that the proposed Consent conforms with the City's Official Plan. He stated that the subject property is designated Residential Low Density I with a portion designated as Greenlands. He said the Residential Low Density I designation permits the development of detached dwellings and the Official Plan permits intensification in neighbourhoods where it is compatible in terms of built form and scale.

He opined that the proposed Consent would bring the subject property more in character with the neighbourhood. He said the Applicant intends to sever and then sell the proposed lots for residential development and that the location, massing, height and other details of any future development on the proposed lots have not been finalized.

[21] Regarding the Greenlands policies in the City's Official Plan, Mr. Broll stated that the Greenlands designation is meant to give protection from hazard lands, to protect natural features, and to ensure that development is prohibited on flood plains. He stated that although part of the subject property is marked Greenlands on the Official Plan's land-use schedule (Schedule 10), neither the City nor the Conservation Authority found any natural heritage features or Greenland characteristics on the subject property. They do not oppose the proposed instruments. He said the City's Official Plan policy 19.18.2 states that Greenlands are to be determined by the City in consultation with the Conservation Authority on a site-by-site basis. He stated that only the southwest corner of the subject property is in the Conservation Authority's regulated area. He said the building envelopes for the proposed lots are not located in the regulated area, and, in any event, the City's Official Plan policy 6.3.11 allows for minor amendments to a Greenlands boundary without an official plan amendment. He presented a proposed revised Greenlands boundary map prepared by the Conservation Authority, but noted that it is only a draft.

[22] Regarding the frontage requirements in the City's Official Plan, Mr. Broll stated that at the time of the applications, policy 16.1.2.1 required that lot frontage and area should be compared to the average frontages and areas of neighbouring properties within 120 m of a proposed development. He said that this policy was amended in July 2019 by Official Plan Amendment No. 95 ("OPA No. 95") to require that minimum frontages and areas of new lots in areas designated Residential Low Density I and II are to be evaluated in the context of the existing lot pattern in the surrounding area. He stated that based on his study of the surrounding area, the lot frontages and lot areas of the proposed lots are generally consistent with the existing lot fabric and are compatible

with the neighbourhood. He opined that the proposed Consent satisfies the requirements of both the 120 m test and the OPA No. 95 test.

[23] Mr. Broll also opined that the proposed instruments satisfy the infill housing policies in the City's Official Plan. He stated that the proposed Consent allows for generous setbacks, ensures that drainage conditions are preserved, and facilitates new housing that fits the scale and character of the area.

[24] Mr. Broll said the subject property is zoned as Residential (R3-3) with a Greenlands Overlay on part of it. He reviewed the sizes of dwellings permitted under the Zoning By-law and stated that development on the proposed lots would not represent over-development and would be in keeping with the area. Mr. Broll stated that development on the subject property is subject to site plan approval and that details relating to setbacks, grading, drainage, scale, shadowing and overlook, building design, trees and other attributes would be addressed at that stage.

[25] Mr. Broll opined that the proposed Consent has regard to the criteria set out in s. 51(24) of the *Planning Act*. He stated that the proposed Consent and variances have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. He said they protect ecological systems, address transportation concerns, and represent the orderly development of a safe and healthy community. He reiterated that the subject property is subject to site plan control and is not premature. He opined that the lands are suitable for residential development, the shapes of the proposed lots will conform with the lot pattern in the area, municipal services are available, and the proposed lots will address the conservation of natural resources.

[26] Mr. Broll stated that the Consent conditions required by the Committee of Adjustment are appropriate. He said the granting of an easement to the City so that it can access and maintain the pond and the other conditions are consistent with the City's practice and are reasonable.

[27] Regarding the proposed variances, Mr. Broll opined that they maintain the general purpose and intent of the City's Official Plan. He stated that the subject property is designated for residential development, the Official Plan recognizes that a portion of the City's growth will be through infill development in Neighbourhoods (such as where the subject property is located, as shown in the Official Plan's Schedule 1 on the Urban System), the proposed frontage meets the general intent of the 120 m and OPA No. 95 tests, and that the proposed development would be compatible and co-exist in harmony with existing development in the area.

[28] Mr. Broll opined that the proposed variances maintain the general purpose and intent of the Zoning By-law. He stated that the proposed lots would be large and generally in keeping with other lots in the area. He said that despite the Greenlands Overlay, there are no Greenlands features on the proposed lots. He said all other zoning regulations would be met. He said that the site plan control process would ensure that the eventual residential development on the proposed lots would address the height, scale and other regulations in the Zoning By-law.

[29] Mr. Broll opined that the proposed variances are desirable for the appropriate use of the subject property. He said the addition of one new dwelling is desirable in the subject property's low-density residential neighbourhood. He said it represents sensitive development in a stable neighbourhood. He said having two dwellings would be in keeping with the character of the neighbourhood and the proposed north-south severance would help protect the integrity of the pond and be more desirable than an east-west severance.

[30] Mr. Broll opined that the proposed variances are minor. He said they would be in keeping with the prevailing lot frontages in the surrounding area, would be compatible, and would have no adverse impacts on neighbours.

Kayam Ramsewak

[31] Mr. Ramsewak said that drainage issues are not relevant to the proposed Consent. He said the existing drainage patterns on the subject property will persist regardless of whether there are one or two dwellings on the subject property. He said development on the proposed lots would respect the existing drainage system. He said there is a blocked municipal culvert near the north end of the subject property. He stated that he does not know to where it leads. He said water runoff from Ravine Drive flows along roadside ditches. He said no municipal drainage enters the subject property and there are no drainage easements on the subject property.

[32] Mr. Ramsewak opined that the pond is fed by surface water from the subject property. He said any development on the proposed lots would be above the water table. He said the proposed Consent is not premature from a drainage perspective because municipal drainage does not enter the subject property, the proposed Consent would not alter groundwater flows, and there are no further drainage studies needed. He said final grading and drainage issues would be addressed at the site plan approval stage.

David Stephenson

[33] Mr. Stephenson stated that the pond is a man-made ornamental feature surrounded by landscaping. He said it is 0.042 hectares in area and too small for a wetlands evaluation. He said natural habitats on the subject property and pond are severely limited and there are no significant natural features there. He stated that the pond is devoid of natural features or functions and no environmental impact or other studies are needed. He said the pond is not connected downstream and that despite the sighting of a species at risk at the pond, natural habitat on the subject property is severely limited.

[34] Regarding trees on the subject property, Mr. Stephenson stated that tree coverage is an issue that is usually addressed at the site plan approval stage. He said grading and tree plans will be prepared for any future development on the proposed lots. He said there are no significant tree species on the subject property and that many of the nearby trees are on the municipal right-of-way along Ravine Drive, not on the subject property.

Appellants' Evidence

Ted Davidson

[35] Mr. Davidson opined that the proposed Consent and variances are not consistent with the PPS. He stated that the PPS envisions intensification in urban growth areas, major transit station areas, community nodes, major nodes, and intensification corridors, not in stable residential neighbourhoods. He said the area in which the subject property is located has no public transit, no stormwater sewers, and no sidewalks. He said PPS policy 2.2 directs municipalities to protect the quantity and quality of water resources by applying a watershed scaled approach. He said the surface water feature on the subject property connects with Birchwood Creek and Lake Ontario and must be properly assessed. He said the proposed lots will not provide for affordable housing and will not assist in meeting housing targets. He opined that the subject property is not an appropriate location for intensification.

[36] Mr. Davidson opined that the proposed Consent does not conform with the Growth Plan. He said the Growth Plan directs growth and development to specific areas such as growth centres and not to areas where there is no publicly funded infrastructure or public transit. He reiterated that the subject property is not close to public transit and the area has no sidewalks to facilitate active transportation. He said the addition of one home will do little in helping achieve the Growth Plan's targets.

[37] Mr. Davidson opined that the proposed Consent does not conform with the Region's Official Plan. He stated that at least a portion of the subject property lies within the Greenlands Core Area under the Plan. He stated that the Region's Official Plan restricts residential development within Greenlands Core Areas to existing lots of record. He said that pursuant to the Region's Official Plan, Greenlands designations can only be altered after a corresponding amendment to the City's Official Plan.

[38] Mr. Davidson opined that the proposed Consent and variances do not conform with the City's Official Plan. He said the City has identified intensification areas and the area around the subject property is not one of them. He said it is not located in the City's urban growth area, it is not close to public transit, and it is not in a community node. He stated that the City's Official Plan policy 5.3.5.1 states that Neighbourhoods are not to be the focus of intensification and should be regarded as stable residential areas where existing character is to be preserved. He stated that under policy 9.2.2 only limited growth is anticipated in these areas. He said new development is to respect existing lot patterns, respect the continuity of setbacks, and respect the scale and character of an area. Mr. Davidson said policy 9.5.1.2 states that development should be compatible and have regard for the natural heritage system, the size and configuration of surrounding lots, enhancement of streetscapes, consistency of setbacks, and the preservation of views and privacy. In terms of the implementation provisions in the City's Official Plan policy 19.4.3, he stated that the proposed Consent does not adequately address stormwater management issues, the suitability of the proposed lots for accommodating on-site functions associated with the pond, or road access and safety issues.

[39] Mr. Davidson stated that the City's Official Plan policy 16.5.1 addresses infill housing in the Clarkson-Lorne Park Neighbourhood area in which the subject property is located. He said the policy states that infill housing is to preserve and enhance the generous setbacks in the area, ensure that existing grades and drainage conditions are preserved, and encourage new housing that fits the scale and character of the

surrounding area. He said that given the frontages and areas for the proposed lots and the absence of grading, tree, and other studies, these requirements are not satisfied.

[40] Mr. Davidson said that most of the proposed severed lot is in a Greenlands designated area under the City's Official Plan. He stated that the designation is not an overlay. It is a land use designation. He stated that the City's Official Plan allows new single detached dwellings on Residential Low Density I designated lands, but not on Greenlands designated lands. He opined that an official plan amendment is required to remove the Greenlands designation and that an environmental assessment needs to be conducted. He said residential uses are only allowed on existing lots of record in Greenlands areas. In reference to policy 6.3.11, which states that minor refinements to the boundaries of the Natural Heritage System may occur through appropriate studies accepted by the City without amendment to the City's Official Plan, Mr. Davidson said changes to the Greenlands boundary at the subject property would be a major amendment and policy 6.3.11 does not apply.

[41] Mr. Davidson said the subject property does not meet the definition of a "corner lot", which requires a lot to have frontage on two streets. He said the subject property is solely on Ravine Drive and the proposed Consent would create two interior lots. He opined that the R3-3 zone's minimum lot area requirements are problematic. He said a 550 m² lot with 30 m of frontage, as permitted as a minimum under the R3-3 zoning, would result in little room for a dwelling once setbacks are applied and would not be in keeping with the neighbourhood. He said policy 16.1.2.1 is designed to address this issue and ensure that neighbourhood character is preserved by addressing both frontage and area. He opined that the 120 m and OPA No. 95 tests are similar in essence.

[42] Applying the 120 m lot analysis under the City's Official Plan policy 16.1.2.1, Mr. Davidson said that he calculated the average lot area to be 2,948.43 m² and average interior lot frontage to be 33.23 m for lots within 120 m of the subject property.

He opined that the proposed 1,973 m² retained lot and 1,847 m² severed lot and their 28 m frontages are not consistent with these averages.

[43] Mr. Davidson opined that the proposed Consent does not have regard for the criteria in s. 51(24) of the *Planning Act*. He said the matters of provincial interest set out in s. 2 of the *Planning Act*, including the conservation of natural resources, have not been fully reviewed. He said the proposed Consent is premature as there has been no site plan application filed, no tree reports prepared, no environmental studies done, and no grading or drainage plans prepared. He said the proposed lots are not suitable and their proposed dimensions and shapes do not reflect the character of the area. He said that without a site plan it is impossible to assess compatibility or impacts.

[44] Regarding the proposed variances, Mr. Davidson opined that they do not maintain the general purpose and intent of the City's Official Plan. He said Neighbourhoods are to be stable areas and the proposed variances would facilitate a development that is not in keeping with the area. He said the proposed variances seek frontages of 28 m where the average in the area is 33 m and the proposed lot areas are roughly 1,000 m² less than the neighbourhood average. He also referred to the Greenlands designation on the subject property, which he said requires a proper study and an official plan amendment for the proposed variances to be authorized.

[45] Mr. Davidson opined that the proposed variances do not maintain the general purpose and intent of the Zoning By-law. He said the intent of the Zoning By-law is to ensure that lot frontage regulations are respected and lot areas are in keeping with the character of the area, which he opined the proposed variances do not do. He stated that the proposed severed lot would not satisfy the Zoning By-law's interior lot side yard setback regulations and much of that proposed lot is zoned R3-3 with a Greenlands Overlay, which restricts development.

[46] Mr. Davidson opined that the proposed variances are not desirable for the appropriate use of the subject property. He stated that the development of the proposed lots would have significant visual impacts and maintaining one single detached dwelling on the subject property is preferable. He stated that having two single detached dwellings on the subject property would not be in keeping with the character of the area. He also said development constraints, including the pond, slope and trees on the subject property, do not make it desirable for development. He stated that the variances would set a bad precedent for the area.

[47] Mr. Davidson opined that the proposed variances are not minor. He said the impacts of development on the proposed lots have not been considered and are difficult to address without a site plan being submitted.

Ken Chow

[48] Mr. Chow described the municipal drainage system on Ravine Drive. He said historically a stream ran through the subject property and then down the valley to Birchwood Creek. He said the culvert to the north of the subject property likely was connected to a pipe that ran through the subject property with an outlet into the pond. He said a drainage easement would not have been required because the water followed its natural course through the subject property. He opined that currently water likely flows onto the subject property from the municipal right-of-way, the ground, and neighbouring properties. He stated that detailed environmental, surface water, and hydrogeological studies are needed to ascertain the actual drainage area and where water flows through the subject property. He outlined options for addressing the drainage in the area and concluded that further studies are needed. Without further studies, he opined that the proposed Consent is premature. He opined that there is a danger that development on the proposed lots could impede water flows and he said the existing drainage and quantity and quality of water must be maintained.

Stephen Douglas, Ken Schmidt and Rick Gaetz

[49] Messrs. Douglas, Schmidt and Gaetz are Appellants. They each provided fact evidence. Mr. Douglas expressed concerns that the proposed Consent and variances would result in a development that would permanently scar the neighbourhood with smaller dwellings and cause traffic and road safety problems. Mr. Schmidt stated that privacy and the curb appeal of the subject property would be impacted by the proposed instruments and that the subject property has a Greenlands Overlay because of its drainage issues and poor suitability for development. He said that species at risk have been found at the pond. Mr. Gaetz stated that the subject property is located in a unique neighbourhood and the proposed Consent and variances would set a bad precedent. He said the interests of the neighbourhood should be respected.

Participants' Submissions

[50] The Participants Greg Duncan, Eiza Ejaz, Elaine Partridge, Peter O'Marra, Joseph Koszo, Zafar Khawaja, Tony Pallante, and Yulia Weber provided written submissions to the Tribunal. They raised concerns, including that the proposed instruments would disrupt the character of the area, cause privacy issues, adversely affect the environmental beauty of the area, result in tree loss, cause traffic and road safety problems, and set a bad precedent.

[51] The Participants Amarit Dhoot and John Paul Kennedy gave oral submissions in response to questions posed by the Tribunal. Mr. Dhoot supports the proposed Consent and variances. He said that it is important to have a variety of lot sizes and frontages in the neighbourhood and the addition of one house to the neighbourhood would not significantly increase traffic or impact road safety in the area. Mr. Kennedy said the existing dwelling on the subject property should be designated as a heritage house and that the subject property should not be severed. He said there is a spring in

the side of the hill and a stream that travels underground down the eastern side of the subject property. He said these hydrogeological features must be taken into account.

ANALYSIS AND FINDINGS

[52] For the reasons that follow, the Tribunal grants the appeal and denies the proposed Consent and variances.

The Proposed Consent

The PPS

[53] The Tribunal finds that the proposed Consent represents very limited intensification with the addition of one dwelling to the neighbourhood. The Tribunal finds that the subject property is located in a settlement area and the proposed Consent would facilitate cost-effective development that would minimize land consumption and servicing costs and provide for an efficient land use pattern. Regarding water and drainage, the Appellants focused on municipal drainage issues and issues related to the pond. The Committee of Adjustment's approval of the Consent application was subject to conditions, including those requested by the City's Transportation and Works Department requiring the Applicant to prepare and submit an overall grading and drainage plan and a drainage study for the pond. With these conditions, the Tribunal finds that the water and drainage issues raised by the Appellants would be addressed and the quantity and quality of water resources would not be adversely affected by the proposed Consent.

The Growth Plan

[54] The subject property is located within the City's built boundary throughout which intensification is encouraged. Growth Plan s. 2.2.1(2) directs that the vast majority of

growth is to be directed to settlement areas that have a delineated built boundary, have municipal water and wastewater systems, and which can support the achievement of complete communities. The Growth Plan s. 2 emphasizes the importance of optimizing the use of the existing land supply to avoid over-designating new land for future urban development. The Tribunal finds that although there are no sewers or sidewalks and no nearby public transit in the area, the existing functioning residential infrastructure and services in the neighbourhood are sufficient to support development on the proposed lots. The Tribunal finds that the proposed Consent conforms with the Growth Plan.

The Region's Official Plan

[55] Based on the Region's Official Plan Schedules A (on Greenlands Core Areas) and D (on Regional Structure), the Tribunal finds that the western portion of the subject property is within the Region's Urban System and the eastern portion is designated Greenlands Core Area. Although residential dwellings are permitted in Urban System areas, policy 2.3.2.6 prohibits development of new single residential dwellings in Greenlands Core Areas (except, in some cases, on existing lots of record). The Region's Official Plan policy 2.3 emphasizes the importance of protecting natural areas through the Region's linked network of protected Greenlands. It differentiates between Core Areas, Natural Areas and Corridors, and Potential Natural Areas and Corridors as components of the Region's Greenlands System. Core Areas provide conditions for uninterrupted natural systems and provide habitat for multiple species of wildlife. Natural Areas and Corridors contain important natural features and support the Core Areas. Potential Natural Areas and Corridors may contain important natural features and are protected by the area municipalities. Policy 2.3.2.2 defines Core Areas to include wetlands, woodlands, environmentally sensitive areas, significant habitats of threatened and endangered species and core valley and stream corridors. The Region's Official Plan Schedule A sets out the Core Areas of the Greenlands System in the Region. Although the Applicant questioned the natural heritage features on the subject property, the eastern portion of the subject property is close to valley lands and

is mapped as Core Area in Schedule A. Policy 2.3.2.1 states that reference should be made to area municipal official plans and related documents for a detailed interpretation of the location and extent of Greenlands. As discussed below, the City's Official Plan Schedule 10 (on Land Use Designations) identifies the eastern section of the subject property as Greenlands.

[56] The Region's Official Plan policy 2.3 states that area municipalities may alter Greenlands boundaries provided that the alterations are incorporated into the municipality's official plan by an official plan amendment. It states in part:

Area municipalities may identify additional parts of the Greenlands System as local Core Areas in their official plans and may provide policies governing the protection of such areas, having regard for local considerations and the intent of this Plan. Area municipal official plans may also add specific areas to or delete them from the Core Areas of this Plan, where the addition or deletion is in conformity with the definition of Core Areas. For example, if as a result of new information, it is determined by a Conservation Authority that an area previously identified as an Environmentally Sensitive or Significant Area (ESA) no longer meets the criteria for such an area, or that an area not previously so identified should now be so identified, the area municipal plan may reflect such a determination and be in conformity with this Plan. Such a refinement need not be incorporated by amendment into this Plan or shown on Schedule A but must be incorporated by amendment into the area municipal official plan.

In the present case, the City has not amended its Official Plan to alter the boundaries of the Greenlands area on the subject property as required for this policy to apply.

[57] The Applicant intends to sever the subject property in order to facilitate the development of a new residential dwelling on each of the proposed lots. Given that the Region's Official Plan policy 2.3.2.6 prohibits the development of new single residential dwellings within Greenlands Core Areas, except for on existing lots of record, and given that the eastern section of the subject property is designated as Greenlands under both the Region's Official Plan and the City's Official Plan, the Tribunal finds that the proposed Consent does not conform with the Region's Official Plan.

The City's Official Plan

[58] The City's Official Plan policy 11.2.3.1 states that "Greenbelt" lands, interpreted by the Parties as "Greenlands", are generally natural hazard and/or natural areas where development is restricted. Policy 11.2.3.1 states:

Lands designated Greenbelt are generally associated with natural hazards and/or natural areas where development is restricted to protect people and property from damage and to provide for the protection, enhancement and restoration of the Natural Heritage System.

[59] Policy 11.2.3.2 sets out permitted uses in Greenlands. It does not include residential uses.

[60] Policy 11.2.3.8 allows development on existing lots of record in Greenlands provided that the development is not on hazard lands or in the regulatory storm floodplain. In the present case, the proposed lots would be new lots, not existing lots of record, therefore, this policy does not apply.

[61] The City's planning staff report states that the Conservation Authority is updating its Greenlands mapping. The report states:

The purpose of the Greenlands designation is to prohibit development occurring within natural hazards and to protect existing natural features contained within a site. Credit Valley Conservation (CVC) is currently updating their mapping of significant natural features and the flood plain boundaries which will modify the existing "Greenlands" designation as a future City plan reflect the updated mapping boundaries of the CVC. Although the subject property is designated Greenlands, current CVC mapping indicates that the flood plain, the Region of Peel's "Core Greenlands" and the natural area is wholly located outside the subject property. It should also be noted that CVC has no concerns regarding the Consent and future development of the subject property, subject to the pond in the rear portion of the lot being maintained.

[62] The Applicant argues that the City's Official Plan policy 19.18.2 states that Greenlands designated lands are to be determined on a site-by-site basis by the City in consultation with the Conservation Authority. Based on Mr. Stephenson's evidence, the

Applicant submits that the eastern portion of the subject property does not warrant the Greenlands designation and the City's Official Plan and its Land Use Designations Schedule will be changed. However, those changes have not occurred and the proposed severed lot continues to be largely designated as Greenlands. Both the Region's Official Plan Schedule A (on Greenlands Core Areas) and the City's Official Plan Schedule 10 (on Land Use Designations) show the eastern portion of the subject property as being in the Greenlands designation.

[63] The Applicant further argues that an official plan amendment is not needed. Policy 6.3.11 states that minor refinements to the boundaries of the Natural Heritage System may occur through appropriate studies accepted by the City without amendment to the City's Official Plan. Policy 6.3.11 states:

Minor refinements to the boundaries of the Natural Heritage System may occur through Environmental Impact Studies, updates of the Natural Heritage System, or other appropriate studies accepted by the City without amendment to this Plan. Major boundary changes require an amendment to this Plan.

[64] The Natural Heritage System includes natural areas, woodlands, wetlands and valley and watercourse corridors, which may include lands designated as Greenlands. The Tribunal finds that based on the City's Official Plan's schedules, refinements to the Greenlands boundaries for the subject property have not been made. The Tribunal was presented with draft mapping prepared by the Conservation Authority proposing revised boundaries, but there is no evidence that this draft has been finalized or approved. Without direct inputs or agreement from the City and the Conservation Authority it would be inappropriate for the Tribunal to make boundary refinements, particularly in the present case where a request for the alteration of Natural Heritage System boundaries is not an issue that is formally before the Tribunal and there has been no authority provided to the Tribunal stating that it has the power to make such changes. Also, there is no evidence before the Tribunal that the appropriate studies required in policy 6.3.11 have been addressed.

[65] Section 2.1.18 of the Zoning By-law states that the Greenlands Overlay applies to lands that are designated Greenlands in the City's Official Plan, but are not zoned G1 or G2. The subject property is not zoned G1 or G2 and Zoning By-law Map 10 indicates that the Greenlands Overlay applies to the eastern section of the subject property.

[66] Under Zoning By-law s. 2.1.18.2.1, development on Greenlands Overlay areas may proceed subject to the submission of applicable studies and the approval of the City and the Conservation Authority. However, the application of the Zoning By-law, which implements the City's Official Plan, first must conform with the Official Plan. The boundaries of the Greenlands Overlay zoned area on the subject property generally match the boundaries of the Greenlands designation in the City's Official Plan, which prohibits residential uses on new lots. As the Tribunal has found that the City's Official Plan does not permit residential uses on the eastern section of the subject property, the Greenlands Overlay consequently cannot be applied to permit development facilitating residential uses there.

[67] Given that the City's Official Plan policy 11.2.3.2 does not permit residential uses in Greenlands areas and the intent behind the Consent is to facilitate residential development, the Tribunal finds that the proposed Consent does not conform with the City's Official Plan.

Section 51(24) of the Planning Act

[68] For the reasons set out above, the Tribunal finds that the proposed Consent does not conform with either the Region's or the City's Official Plan and the proposed lots are not suitable for the purposes for which the subject property is to be subdivided. The Tribunal finds that the proposed Consent does not satisfy the criteria set out in s. 51(24) of the *Planning Act*.

The Proposed Variances

[69] Given the Tribunal's findings regarding the Consent application, the proposed lots are not approved and the issue of variances regarding those proposed lots is rendered moot.

ORDER

[70] The Tribunal grants the appeal.

[71] The Tribunal orders that provisional Consent is not given and the proposed variances are not authorized.

"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

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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