

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



ISSUE DATE: May 08, 2019

CASE NO(S): PL170607

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 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Flintshire Building Group Corp.
Subject:	Request to amend the Official Plan - Failure of the City of Brampton to adopt the requested amendment
Existing Designation:	“Low Density”, “Low Density 1”, “Upscale Executive Housing Policy Area” and “Private Commercial Recreation”
Proposed Designated:	“Executive Residential” and “Low Density 2”
Purpose:	To permit 67 single-detached dwellings and the conveyance of the balance of the site to the City for the protection of natural heritage features
Property Address/Description:	South Side of Country Dr. East of Airport Rd
Municipality:	City of Brampton
Approval Authority File No.:	C07E15.015
OMB Case No.:	PL170607
OMB File No.:	PL170607
OMB Case Name:	Flintshire Building Group Corp. v. Brampton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Flintshire Building Group Corp.
Subject:	Application to amend Zoning By-law No. 270-2004 - Refusal or neglect of the City of Brampton to make a decision

Existing Zoning: Recreational Commercial "RC" Zone
 Proposed Zoning: Site Specific Residential Single Detached Zones
 "R1A", R1B" and "R1C, modified , Open Space
 zone "OS" and Flood plain zone "F"
 Purpose: To permit 67 single-detached dwellings and the
 conveyance of the balance of the site to the City
 for the protection of natural heritage features
 Property Address/Description: South Side of Country Dr. East of Airport Rd
 Municipality: City of Brampton
 Municipality File No.: C07E15.015
 OMB Case No.: PL170607
 OMB File No.: PL170608

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O.
 1990, c. P.13, as amended

Applicant and Appellant: Flintshire Building Group Corp.
 Subject: Proposed Plan of Subdivision - Failure of City of
 Brampton to make a decision
 Purpose: To permit 67 single-detached dwellings and the
 conveyance of the balance of the site to the City
 for the protection of natural heritage features
 Property Address/Description: South Side of Country Drive East of Airport Rd
 Municipality: City of Brampton
 Municipality File No.: 21T-16005B
 OMB Case No.: PL170607
 OMB File No.: PL170609

Heard: July 9 to July 17, 2018, in Brampton, Ontario

APPEARANCES:

Parties

Flintshire Building Group
 Corporation

City of Brampton

2585426 Ontario Inc.

Counsel

P. DeMelo
 K. Jennings

M. Rea

I. Tang

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL

BACKGROUND

The Flintshire Proposal

[1] Flintshire Building Group Corporation (“Flintshire”) owns lands that were operated by the previous owner as the Castlemore Golf and Country Club (“Club”) in the City of Brampton (“City”). The Club ceased operation in 2014, prior to Flintshire acquiring the lands in 2015. The lands are located south of Countryside Drive and east of Airport Road. Single family residential subdivisions have been developed in and around the former Club property.

[2] The Flintshire lands are 19.74 hectares (“ha”) and include the West Humber River (“River”) and valley lands. The River and valley lands formed part of the former Club property and cut diagonally on an approximate southeast course from north of Countryside Drive.

[3] Flintshire wishes to develop three irregularly shaped parcels, known as Parcels A, B and C, for single family residential development. These three residential Parcels total 6.1 ha. The remaining 13.64 ha are made up of a valley block, associated buffer blocks, compensation blocks and a walkway block. The intended result of these blocks is to have the River and valley lands appropriately buffered from development while providing a walking trail access to the River and valley lands that were previously inaccessible for the public.

[4] Parcel A is located on the east side of the River and valley lands and is 2.20 ha. Parcels B and C are on the west side of the River and valley lands. Parcel B is located within, and is surrounded by, an earlier subdivision development. South of Parcel B is Parcel C. Parcel C has existing subdivision development to the north, west and south. It overlooks the valley lands to the east.

[5] In support of its wish to develop these three Parcels, Flintshire applied for an official plan amendment (“OPA”), an associated zoning by-law amendment (“ZBLA”) and a draft plan of subdivision. The City failed to make a decision on these applications and Flintshire has appealed these matters to the Tribunal.

Parties, Participants and Witnesses

[6] The Toronto and Region Conservation Authority (“TRCA”) had secured Party status in these proceedings at an earlier pre-hearing appearance. Following the third pre-hearing, TRCA advised the Tribunal that it wished to withdraw as a Party. No other party objected to the withdrawal and TRCA withdrew.

[7] The remaining Parties and Participants appeared in opposition to Flintshire.

[8] The City appeared in opposition but called no witnesses to deal with any issue.

[9] The City had indicated that it would call a professional engineer to address City concerns regarding a servicing issue dealing with stormwater management. Flintshire had indicated that it would also then call a professional engineer to address the City’s concerns regarding stormwater management. Following an experts’ meeting, Flintshire’s professional engineer undertook some further analysis and provided some further information on the matter. The City and Flintshire had different perspectives on when the City had raised the issue. To move matters along, the ‘when’ became less important than the ‘what’ and the question of whether Flintshire’s further information would alleviate some of the City’s concerns. Coincident with, but separate from, the hearing the Tribunal directed further expert meetings between the professional engineers. In the result, the City’s concern was resolved, a statement of agreed facts was filed as Exhibit 13 and the relevant City issues were removed from the Issues List.

[10] 2585426 Ontario Inc. (“258”), also a Party, appeared in opposition to Flintshire. This numbered company represented the area residents in opposition.

[11] Two area residents had been given separate Participant status at one of the pre-hearings conducted by a panel of the Tribunal, differently constituted. They are Frank Carbone and Steve Kirby. Both gentlemen live on the west side of the River and valley lands. Both gentlemen focused their comments on the proposed development of Parcels B and C, which are also on the west side of the River and valley lands.

[12] While Messrs. Carbone and Kirby held Participant status in these proceedings they also held senior positions with 258 and appeared to be the main instructing clients for 258. The earlier decision that added these two residents separately as Participants did not disclose any basis of disagreement with, or concerns to be distinguished from, the issues identified by 258 and the case 258 was calling. While the Tribunal heard from both gentlemen, the Tribunal took note of these circumstances. In the result, their respective evidence was indistinguishable in any substantive way from the issues and case called by 258.

[13] A final Participant was the Sierra Club of Canada, Peel Region Branch (“Sierra Club”). The Sierra Club also appeared in opposition to Flintshire. The Sierra Club had two representatives in attendance: Rosemary Keenan and Pauline Thornham. Ms. Keenan and Ms. Thornham divided their time and each touched upon part of the concerns the Sierra Club wished to present to the Tribunal.

[14] The Tribunal heard from three expert witnesses: Mark Bradley, qualified for land use planning matters and called by Flintshire; Joanne Lane, a qualified ecologist specializing in environmental impact assessment and called by Flintshire; Allan Ramsay, qualified for land use planning matters and called by 258.

ISSUES, ANALYSIS AND FINDINGS

[15] The consolidated issues list in the Procedural Order set out 32 separate issues. The list failed to identify which Party had placed which issue on the list. On the evidence presented at the hearing, the Tribunal narrowed and grouped these issues down to five key points:

- a. Prematurity, particularly as it relates to the use of road stubs for access and servicing
- b. Compatibility of the proposed development with the existing neighbouring subdivisions
- c. Parkland dedication, both amount and location
- d. Natural Features and Impact on Wildlife
- e. Community Consultation

[16] No evidence was called to dispute Mr. Bradley's professional opinion of the appropriateness of the development of Parcel A, located on the east side of the River and valley lands. The evidence called in support of these five issues all focused on the development proposed for Parcels B and C.

Prematurity and Road Stubs

[17] The road stubs that would provide access and servicing locations to Parcels B and C are owned by the City. In addition to failing to make a decision on the Flintshire development applications, the City has failed to make a decision on whether it will permit the road stubs to be used as access and servicing locations to Parcels B and C. The City and 258 suggest that this circumstance means the proposed development of Parcels B and C is premature.

[18] The Tribunal's role in these matters is to decide whether the proposed development meets the necessary tests and represents good planning. There is an entirely separate process to address ownership and disposition of the road stubs, and that process is not a matter for the Tribunal in these proceedings.

[19] Although the City called no planning witness, City planning comments filed in these proceedings indicated staff support for the use of the road stubs for access to Parcels B and C. The Tribunal finds that the location of these road stubs is appropriate for access to the two Parcels. Whether the City will permit their use for this purpose is a matter left to the City.

[20] The road stubs are also areas identified for servicing for Parcels B and C. The statement of agreed facts from the engineers, referenced above, included the identification of certain changes that would have to be made to meet the City's concerns. If Flintshire does not acquire the road stubs, the engineers agreed that alternative arrangements would have to be made and that Flintshire would file an updated Functional Servicing Report, consistent with the identified necessary changes.

[21] Recognizing that the disposition of the road stubs is a matter in the hands of the City, and recognizing the servicing matters agreed between Flintshire and the City, the Tribunal finds that the proposed development is not premature.

Compatibility

[22] The City's approach to what should be taken into account when considering compatibility is best said in section 4.11.3.2 of the City's Official Plan. This section deals with Community Revitalization and says in part:

...The key consideration for new development/redevelopment in existing built-up areas is compatibility. Compatibility does not mean uniformity or even consistency, but should relate to the context of the site and surrounding neighbourhood, landscape and townscape... [Emphasis added by the Tribunal]

[23] There are several elements in the proposed development that mirror the surrounding neighbourhood, several others that are similar to the surrounding neighbourhood, and still others that enhance the surrounding neighbourhood.

[24] No change has been proposed to the zoning by-law standards for minimum lot area, to the 13.7-metre (“m”) lot frontage or to the minimum rear yard setback of 7.5 m. The proposed ZBLA has increased the side yard setbacks.

[25] The existing subdivisions use cul-de-sacs and curving roads. As a result, differently sized and differently shaped lots are found throughout the existing development. The specific density on a given lot may differ based on size but the pattern remains. Houses in the existing development are oriented to a public road and this orientation is consistent and repeated in the proposed development.

[26] The existing neighbourhood is composed of two-storey, single family detached dwellings and that is what is proposed for the new development.

[27] The parts of the River and valley lands that are currently in private ownership are to be in public ownership with public access provided with walking trails and protected with a 10 m buffer.

[28] The Tribunal finds that the proposed development is clearly compatible with the existing neighbourhood character and squarely meets the intention of the City’s Official Plan with regard to compatibility.

Parkland Dedication

[29] The question of whether the City elects to take a parkland dedication as land, as cash in lieu of parkland, or a combination of the two, is entirely a matter for the City. The City has not made that determination at this point. The amount of parkland dedication, whether as land or as cash in lieu of land, is a numeric determination that results from the application of the required standard. The application of the formula is not at issue in these proceedings.

[30] One of the areas for part of the proposed land dedication is adjacent to an existing parkette within the existing neighbourhood surrounding Parcel B. This location

would enable the parkette to be expanded and was noted as appropriate in staff comments.

[31] The Tribunal finds that an expansion of the parkette would be appropriate but the final decision on whether to accept a land dedication in this location is left to the City.

Natural Features and Impact on Wildlife

[32] The City called no evidence on this issue. TRCA withdrew as a Party and, therefore, called no evidence on this issue. 258 appeared to consider calling evidence on this issue and Mr. Ramsay included some references in his witness statement. He acknowledged, fairly, that this was not an area of his expertise and he could not provide first instance evidence on natural heritage and wildlife. Since 258 called no other witness, there was no other expert for 258 to deal with the issue and on whose evidence Mr. Ramsay might rely.

[33] The Sierra Club representatives spoke to this issue but couched their testimony in concerns and possibilities. The Tribunal does not doubt the sincerity of the views held and concerns expressed by the Sierra Club representatives. The evidence called in these proceedings, however, satisfies the Tribunal that appropriate steps and care have and will be taken.

[34] Ms. Lane, the ecologist and expert in environmental impact assessment called by Flintshire, was clear and unambiguous in her testimony. The natural areas of the river and valley lands were being appropriately protected. Wildlife using these areas could and would continue to do so. There are no threatened or endangered species on the development lands.

[35] The Tribunal finds that the necessary steps have been taken to protect natural features and wildlife.

Community Consultation

[36] Criticism regarding community consultation and suggestions that there is a need for additional community consultation was advanced by 258 and by Messrs. Kirby and Carbone.

[37] Appropriate community consultation requires co-operation between a proponent willing to present its proposal and willing to listen to the response, a community willing to hear details of the proposal and consider alternatives to its preferred position of 'no development' and, where Councillors are also involved, a willingness by Councillors to facilitate an open exchange between a proponent and the residents.

[38] Unchallenged evidence was presented to the Tribunal that Flintshire sought to be included in two of the many meetings of area residents in order to present details of its proposed development and hear responses. Flintshire was told not to attend. No evidence was presented to suggest to the Tribunal that further future attempts at consultation would have a different result.

Conclusion

[39] Mr. Bradley reviewed the Provincial Policy Statement 2014 ("PPS"), the Growth Plan for the Greater Golden Horseshoe 2017 ("GGH"), the policy regime of the City's Official Plan, the details of the proposed OPA and the proposed ZBLA, and the proposed conditions of draft plan approval for the proposed draft plan of subdivision.

[40] For the PPS, the Tribunal notes in particular the emphasis on the efficient use of land and infrastructure, the importance of development within the built boundary, the protection of natural heritage and care of environmental features. For the GGH, the Tribunal notes in particular the similar emphasis on optimization and efficient use of land, a focus on development within settlement areas and direction to protect natural heritage and environmental features.

[41] On Mr. Bradley's evidence, the Tribunal finds that the proposed OPA, ZBLA and draft plan of subdivision, subject to conditions, are consistent with the PPS and conform to the GGH. The Tribunal has had regard to the matters of Provincial interest, as set out in s. 2 of the *Planning Act*, and finds that the proposed OPA, ZBLA and draft plan of subdivision, subject to conditions, appropriately implement the relevant matters of Provincial interest.

[42] The Tribunal finds that the proposed OPA conforms to the policy regime of the City's Official Plan and that the proposed ZBLA conforms to the City Official Plan as modified by the proposed OPA.

[43] The Tribunal has considered the evidence called by 258 that the proposed draft plan of subdivision does not meet the criteria set out in s. 51(24) of the *Planning Act*. The Tribunal has reviewed the criteria set out in s. 51(24) of the *Planning Act* and has considered the appropriateness of the proposed conditions of draft plan approval in terms of s. 51(25) of the *Planning Act*. The Tribunal finds that the proposed draft plan of subdivision, subject to conditions, meets the criteria as set out in the *Planning Act*, conforms to the proposed OPA and is compliant with the proposed ZBLA.

[44] The Flintshire appeals have come to the Tribunal as a result of the failure of the City to make a decision on the applications. As such, the Tribunal has no decision of the City to consider as the Tribunal discharges its responsibility under the *Planning Act* to have regard to the decision of the municipality and to materials before the municipal council in reaching its decision, as required by s. 2.1 of the *Planning Act*.

ORDER

[45] The Tribunal orders that the appeals by Flintshire Building Group Corporation are allowed and:

- a. The Official Plan of the City of Brampton is modified by the proposed Official Plan Amendment found at Tab 28 of Exhibit 2(b), as filed in these proceedings
- b. City of Brampton Zoning By-law No. 270-2004 is amended in accordance with Tab 27 of Exhibit 2(b), as filed in these proceedings
- c. The draft plan of subdivision filed in Tab 25 of Exhibit 2(b) is approved, subject to the conditions filed in Tab 26 of Exhibit 2(b) and the conditions set out in Exhibit 13, all as filed in these proceedings.
- d. The Tribunal's final order is withheld for 45 days in order for the City of Brampton to draft proposed engineering conditions of approval consistent with the revised Functional Servicing Report, as set out in paragraph F6 of Exhibit 13, as filed in these proceedings.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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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