

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 03, 2017

CASE NO(S): PL150750

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: 1721074 Ontario Inc.
Subject: Proposed Plan of Subdivision
Property Address/Description: Part 1-6, 53R-18857, Lot 1, Conc. 2, Township of McKim Keast Drive, Sudbury
Municipality: City of Greater Sudbury
Municipal File No.: 780-6/11003
OMB Case No.: PL150750
OMB File No.: PL150750
OMB Case Name: 1721074 Ontario Inc. v. Greater Sudbury (City)

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

Applicant and Appellant: 1721074 Ontario Inc.
Subject: Application to amend Zoning By-law No. 2010-100Z – Neglect or Refusal of application by City of Greater Sudbury
Existing Zoning: Future Development (FD)
Proposed Zoning: Low Density Residential One (R1-4), Medium Density Residential (R3), Medium Density Residential Special (R3(S)), Park (P), and Open Space Conservation (OSC) Zones.
Purpose: To permit the development of a plan of subdivision
Property Address/Description: Part 1-6, 53R-18857, Lot 1, Conc. 2, Township of McKim Keast Drive, Sudbury
Municipality: City of Greater Sudbury
Municipal File No.: 751-6/11-6
OMB Case No.: PL150750
OMB File No.: PL160200

PROCEEDING COMMENCED UNDER subsection 51(43) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: 1721074 Ontario Inc.
 Subject: Conditions of approval of draft plan of subdivision
 Property Address/Description: Part 1-6, 53R-18857, Lot 1, Conc. 2, Township of McKim Keast Drive, Sudbury
 Municipality: City of Greater Sudbury
 Municipal File No.: 780-6/11003
 OMB Case No.: PL150750
 OMB File No.: PL160201

Heard: April 19, 2017, Sudbury, ON

APPEARANCES:

Parties

John Beaudry
 1721074 Ontario Inc.
 City of Greater Sudbury

Counsel

David Tang
 Mary Bull
 Stephen Watt

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE BOARD

INTRODUCTION

[1] 1721074 Ontario Inc. (“Applicant”) propose a plan of subdivision for the last large lakefront development parcel located on the Bethel Peninsula at the south end of Ramsay Lake in the City of Greater Sudbury. The parcel is accessed by Keast Drive.

[2] The City approved the application, subject to conditions which had the effect of amongst other things, reducing the number of units and heights permitted overall. The decision of Council was appealed by the Applicant seeking to address the conditions, and by an area resident, John Beaudry (“Appellant”), who disagreed with the density and form of development approved by Council. Mr. Beaudry is a long-time resident in the area and is in the midst of constructing a substantial home on his former cottage lakefront site on the point of land lying to the south east of the subject site near the terminus of Keast Drive. There are 13 other residences on Keast Drive.

[3] At the outset of the hearing, the Applicant and City advised that the proposal had been modified in accordance with the Council approval and settlement had been reached with respect to the plan and the conditions of draft approval on the plan of subdivision initially appealed.

[4] The hearing therefore proceeded on the proposal subject to the settlement. The Board heard evidence from Alex Singbush, Senior Planner Development for the City; Tim Chadder, Planner for the Applicant; Richard Hunter, planner for Mr. Beaudry; Robert Glover, Urban Designer for Mr. Beaudry; and Dr. Siegfried Kirchhefer, servicing engineer for the Applicant.

[5] The Board also heard from Mr. Beaudry himself, and three participants: Dr. Peter Villa, Elaine Porter, and Matthieu Trottier.

ISSUES

[6] The demanding and commanding topography of the site both dictate and constrain the development of the site. At issue is the appropriate intensity and form of development on this site. The Board heard expert evidence from four planning witnesses directed to achieving the overarching policy principles of respecting the open space character and preserving and enhancing the visual quality of the higher elevations and viewpoints of the site, as most particularly enjoyed from the lake. The Parties, through the iterative process of (clarification and co-operation) on the part of the experts at the hearing, finessed the plan of subdivision to be responsive to the evidence of the Mr. Beaudry's Urban design expert to, in his words, 'improve the porosity of the view' to be created by the new built form. The number of lots was reduced and the lotting plan was revisited and revised to ensure all lots met minimum lot frontages of 23 metres, with the net result being a total of 53 lots being proposed.

[7] The Applicant and Mr Beaudry however could not come to agreement on the following:

- a) whether the now 94 units proposed as multiples in the form of three and

five storey low rise apartment buildings are a compatible and appropriate fit for the context;

b) whether parking associated with the multiples should be provided below grade to reduce heights, should the Board find in the affirmative for a);

c) whether the lands at the south easterly limits of the site originally referred to as Lot 56, and ultimately as Lot 53, should be part of the subject approvals; and

d) whether the draft zoning by-law is sufficiently specific to limit the development as revised and represented to achieve the 'porosity' realized through the iterative modification process to respect the open space character objectives of the Official Plan.

CONCLUSIONS AND FINDINGS

The Context and Appropriate Built Form

The Proposal

[8] Council approved a total of 147 units in a plan of subdivision accommodating 54 lots for single detached dwellings and three multiple dwelling blocks accommodating 93 multiple dwelling units to be zoned respectively, Low Density Residential One Special, and Medium Density Residential Special, the latter with a height limit of five storeys. A total of five blocks are to be dedicated to the City and zoned Parks and Open Space Conservation. The Council approval also requires that the entire site be subject to site plan control.

Context

[9] The site is located within the settlement area of the Greater City of Sudbury with frontage on Keast Drive and several hundred feet of lake frontage along the south

westerly shore of Ramsay Lake, east of Bethel Lake and across from the Lake Laurentian Conservation Area. The other property limits abut existing single detached residences on private servicing to the east and south, and draft approved lots for single detached development to the west. The Creighton Fault, and the shoreline beyond, creates the northerly limit of the plan of subdivision and the site. Creighton Fault is a significant geological feature, the western extension of which forms the anchor and principal feature around which Science North is constructed.

[10] Retracing one's way eastward from Science North back to the site along Ramsay Road and the south shore of Ramsay Lake, one passes by the imposing campus of Laurentian University, the Maison McCulloch Hospice and St Joseph's Villa, an assisted living facility, all accessed via South Bay Road, the only land route to the site and the existing residences beyond to the east and south.

[11] Beyond the eastern most limits of the campus there are two subdivisions, the more easterly, draft approved, and adjacent to the westerly limits of the site, the registered "Arlington", which has been partially built out.

[12] The plan of subdivision for the subject site has been configured to tie into and complete the road network of the neighbouring registered plan.

Compatibility and Fit, the Planning Regime

[13] Central to Council's approval and the settlement with the City was the revision of the proposal to bring the proposed density into conformity with the policies for the South Peninsula of Ramsay Lake Policy Area to preserve the open space character of the neighbourhood. At 147 units the maximum net density of 10 units per hectare stipulated by the policies, is achieved. A significant dedication of approximately 30% of the site for parks and open spaces to link to existing trails and open space networks is realized. The lands to be dedicated are comprised of the Creighton Fault and shoreline beyond for parks and Blocks A, F, G and H, for open space uses, the latter two being the heights of land defining the highest rises of the site as viewed from the lake, and which formalize the continuation of the Trans Canada Trail through the site.

[14] In order to capture the opportunity to bring into public ownership the landmark and significant topographical features on this site, the Official Plan policies for Comprehensive Planned Unit Developments (“CPUD”) can be invoked if the proposed development satisfies the criteria stipulated in the CPUD policies. The Applicant, to the satisfaction of Council, has demonstrated how the development of this site and the achievement of the public objectives are best served by using the CPUD criteria.

[15] The CPUD policies authorize Council to impose conditions or permit exemptions deemed appropriate that do not necessarily conform to the standard provisions of a zoning district of the zoning by-law. The density standards apply, however all housing types that meet the criteria of the section, may be permitted, and Council may also authorize increases in the height and density otherwise permitted in return for the provision of facilities, services or matters set out in the by-law.

[16] Despite the opinion of the planner for Mr. Beaudry, the Board finds that the CPUD policies authorize the consideration of the multiple forms of development proposed and to the heights proposed, subject to a determination of compatibility and fit.

[17] Through the course of the hearing and the concurrent iterative revision process, the following spatial elements of the proposal were refined to complement the significant dedications to the City for parks and open space in furtherance of the overall objective of preserving and enhancing an open space character:

- a) increased setbacks between the proposed detached dwelling units;
- b) limiting the height of buildings of detached dwelling units in key locations;
and
- c) requiring significant setbacks from shoreline property lines.

[18] No such tweaking of the size, configuration or orientation of the three blocks slated for medium density apartment form development were explored.

[19] Rather, the Planner for Mr. Beaudry argued that the multiples were not compatible with the abutting existing residences or the open space character and therefore did not meet the threshold Official Plan (“OP”) conformity test and should be divided as lots and blended into the plan of subdivision.

[20] The Board however prefers the evidence of the City and the Applicant that the contouring of the site can allow for the siting of low rise apartment or multiple form of development while complementing the natural character and built form of the surrounding area. This massing of built form, or clustering as Mr. Beaudry’s Planner referred to the three blocks, allows for the highly prioritized acquisition of significant natural elements and linkages to complete the parks and open space component of the public domain found on this site.

[21] Read in totality, the CPUD policies clearly contemplate that Medium Density forms of housing, subject to the compatibility test, may be employed as an approach to provide the opportunity for dedicating a significant public park and open space allotment beyond the required minimum. Such an outcome is achieved, and achieved without any evidence being brought to raise issue with shadow, overlook or privacy. The Low Density maximum of 10 units per net hectare established in the OP as a foundational criterion to maintaining the low density character of the peninsula is not exceeded.

[22] Mr. Beaudry’s Urban Designer did not share the same concerns about the apartment form buildings as his Planner. Instead, he was of the opinion that the mix of built forms was preferable from an urban design perspective as the variety better represented a community and less of a homogeneous monoculture.

[23] His concern focused on the fact that the first two storeys of the buildings proposed for Blocks C and D were to be dedicated to parking and from an urban design perspective such use would not properly animate the street facing façade. The witness offered a number of suggestions as to how, through site plan approval, the concerns or potential deficiencies could be addressed, including putting the parking below grade. He did however agree that it was not necessary to require that the parking be

constructed below grade to meet the OP requirements that the existing skylines and most particularly, the visual quality of the higher elevations from the Lake will be preserved at the five storey height proposed.

[24] The Board therefore finds that on balance, the proposed heights, as in part determined by incorporating structured above grade parking, can fit compatibly on the site while maintaining the important OP objectives of preserving and enhancing views of the heights of land and the open space character. The CPUD approach results in a development pattern which significantly contributes to enhancing public accessibility to and through the site through the dedication of important linkages, viewpoints and pedestrian access to the impressive Creighton Fault.

[25] The urban design issues can be addressed through site plan to ensure that appropriate public realm conditions are created across the frontages of the blocks to be developed for multiples and in reply evidence, specific conditions were commended to the Board by the Applicant's Planner.

The Proposed Zoning By-law

[26] Similarly, the siting of all of the detached dwelling units will be subject to site plan control.

[27] Following the iterative process of improving the porosity of the siting of the singles, and ensuring that all lots maintain a minimum frontage of 23 metres, both parties proffered revised amending by-laws incorporating contrasting approaches to achieving the same objective. Given the overall reality of the determinative maximum road grades which will set the final lotting plan which, as is the norm in draft plan approval, is yet to be plotted against a final site survey, the Board prefers the practicality of the approach recommended by the Applicant's Planner, with the support of the City. This approach to establish absolute cumulative minimum setbacks between buildings to be achieved to allow footprints to be massaged into individual lots and the nuances of the respective topography of the parcel best addresses the challenges of the site. Recognizing that each footprint will be subject to site plan approval, the Board

is comfortable with this combination of 'belts and suspenders', as contrasted to the more definitive stipulation of setbacks proposed by the Appellant, and therefore, subject to the discussion below, approves in principal the By-law in the form of Exhibit 40A.

Lot 56/53

[28] The parties disagreed with respect to whether the original Lot 56, which became Lot 53 after the plan of subdivision was revised and the number of lots reduced, should form part of the plan of subdivision and be developed in conjunction with the balance of the site.

[29] Contrary to the opinions of the City and Applicant Planners, Mr. Beaudry's Planner argues that the lands at the southeast corner of the site are designated *Living Area II*, whereas the balance of the site is designated *Living Area 1*.

[30] There was no dispute that all of the lands are zoned for *Future Development*,

[31] Given the environmental imperative that all new development be on municipal services, and given the evidence was clear that the Lot 53 is a viable building lot which would otherwise be orphaned for no logical reason, the Board prefers the evidence of the Applicant and City which would require that the lot be serviced and that the development be subject to site plan approval.

Concerns of the Participants

Storm water management, site drainage and Ramsay Lake water quality

[32] The settlement, and the conditions of draft plan approval flowing therefrom had not been struck at the time of the document exchange ordered for the hearing, and the participants therefore did not have access to the revised conditions of draft approval until the first day of the hearing when Exhibit 3, the Minutes of Settlement, was offered into evidence.

[33] The Applicants planner and servicing engineer addressed many of the concerns of Dr. Villa and Ms. Porter who are both members of the Ramsay Lake Stewardship Committee, by elaborating on the further studies and specific works required by the revised draft conditions to the satisfaction of the respective Provincial or Municipal approval authority

[34] With respect to the shared concerns about storm water management and quality of runoff into the lake, the revised plan of subdivision captures the flood plain in Block A, which will be dedicated to the City for storm water management purposes, and prior to any development on site, a report outlining the design information and recommended construction procedures for all surface drainage works, erosion control, slope stability, slope treatment and all other geotechnical properties to the satisfaction of the Chief Building Official and Director of Planning Services must be approved. It was Dr. Villa's observation to the Board that the Block A lands were often saturated, and although not designated as a wetland by any Provincial or Municipal policy document, likely performed a function consistent with a wetland. The conditions of draft plan of subdivision deal extensively with requisite studies and prior approvals to control drainage and runoff from all stages of the proposed development activity to maintain water quality in Ramsay Lake.

[35] More specifically, and to illustrate, but by no means be exhaustive, paragraph 24 of the conditions of draft approval in Schedule C to Exhibit 3 prescribe the required standard for storm water generated within the subdivision must achieve 85% total suspended solids removal of the 50 micron particle size for a 1 in 2year storm event, and the treatment facility must have approved pre-treatment devices for petroleum and floatable interception incorporated within the treatment train.

[36] The balance of conditions are similarly prescriptive and directive with respect to prior approvals required and when read collectively demonstrate the rigours of the approvals necessary to achieve final approvals.

Pedestrian, Cyclist Safety on existing road network

[37] Dr. Villa, a very active proponent and practitioner of active transportation submitted both photographic and anecdotal evidence to the Board on the perils of pedestrians, runners, and cyclists using the existing the gravel shoulders of Keast Drive and South Bay Drive Road in the absence of any other form of sidewalk or bike path.

[38] The challenging circumstances of a gravel surface, aggravated by winter conditions and snow storage, seasonal washouts of portions of the shoulder, and the resulting requirement that pedestrians, runners and cyclists resort to the paved portion of the cross section, result in potential conflicts both with and for vehicles competing for space on a limited navigable roadway.

[39] Dr. Villa expressed concern that the current problem would only be worsened during construction and the introduction of larger associated vehicles and machinery, and subsequently with the greater post development volume of traffic from new residents.

[40] Although the circumstances to be inevitably experienced during the construction stage will present sometimes challenging interfaces, the approvals of the development of these lands will require the construction of a paved shoulder on the north side of Keast Drive and South Bay road across the frontage of the property.

[41] Although this improvement will not resolve all of the deficiencies faced by those travelling other than by car, it will ensure that a sidewalk is provided for existing residents of Keast Drive from the easterly limits of Block 53 (another reason for maintaining this parcel as part of the subdivision) to the current location of the bus stop on Block F. The Board, having driven the route to the site, finds Dr. Villa's concerns well founded, and therefore orders that the conditions of draft approval be amended to include the requirement that the Owner construct the portion of the sidewalk across the frontage of the site prior to any work commencing on the site requiring anything other than a passenger vehicles to execute (i.e. completion of studies, surveys etc. by consultants will not trigger requirement to construct sidewalk). The sidewalk is to be

finished and kept clear prior to grading, servicing or site preparation involving heavy machinery to be either delivered or driven to the site.

Maintaining the open space amenity of the undeveloped site

[42] Both Mr. Beaudry and Mr. Trottier are long term residents of the area, Mr. Beaudry of the peninsula and Keast Drive, and Mr. Trottier of South Bay Road. Both enjoy lifestyles which take full advantage of both Ramsay Lake and the extensive conservation lands, the Lake Laurentian Conservation Area forming the south shore of Ramsay Lake and the lands surrounding Lake Laurentian.

[43] Mr. Trottier characterized himself as speaking as an ambassador for the ecosystem, expressing concern that any development of the lands would threaten the fragility of the Ramsay Lake water source, and that the undeveloped state of the site had allowed for informal access thereby extending the trail linkages and viewpoints of the conservation lands already in public stewardship. The conditions of approval will bring approximately 30% of the site into public ownership which has long been a civic objective to complete and preserve the natural amenities prized by Mr. Trottier.

[44] Mr. Beaudry expressed concern about the potential change in the intensity of use of the easterly basin of Ramsay Lake, where his new home is under construction. By virtue of its distance from the boat launch which is closer to Science North, the portion of the lake lying between his property, the subject site and the Lake Laurentian Conservation Area, experiences less boat traffic. Mr. Beaudry also expressed concern that the views of the shoreline currently enjoyed from the lake would significantly change with the development of the subject site.

[45] The Board agrees that as one would reasonably expect given the Future Development zoning of the site, the views from the lake will change with the development, and in fact have been altered with the construction of his own home.

[46] It is the finding of the Board that the buildings will be sited and assimilated in conformity with the policies of the Living Area II Designation and the overarching

policies to maintain the open space character while preserving and enhancing the visual quality of the higher elevations of the subject site as viewed from the lake.

[47] The proposed development is an infill development within the settlement area of Greater Sudbury which, as revised, has had proper regard to the provisions of s. 51(24) of the Planning Act, the Provincial Policy Statement, and the Growth Plan for Northern Ontario. The amended zoning by-law conforms to the CPUD policies and appropriately zones significant natural and open space amenity which is in the public interest and in conformity with the Community Improvement policies of the Official Plan. The draft conditions secure among other things the dedication of the open space blocks, and are herein modified to advance the timing of the construction of the required sidewalk across the frontage of the subject site. The conditions as revised and modified are reasonable and represent good planning.

DECISION

[48] The Board therefore;

1. grants the appeal of 1721074 Ontario Limited in respect of the failure of the Council of the City of Greater Sudbury to make a decision regarding the application to amend Zoning By-law No. 2010-100Z and approves in principle the Revised Zoning By-law amendment as set out in Exhibit 40A;
- 2 grants the appeal of John Beaudry of the plan of subdivision, in part, and approves in principle the Revised Draft Plan of Subdivision as set out in Exhibit 38A; and
3. grants the Applicants appeal of the condition of draft plan approval, in part, and approves in principle the conditions of draft approval attached as Schedule "C" to the Minutes of Settlement together with 1) the additional conditions regarding the site plan applications for multiple unit dwellings on block C and Block D (collectively the Revised Conditions), being Exhibits 3 and 39, and 2) the requirement for the construction of a sidewalk set out in paragraph 41 of this

decision

[49] The Board withholds its final Order approving the Revised Zoning By-law, the Revised Subdivision Plan and the Revised Conditions (collectively the Revised Planning Instruments”) until the Board is advised by Counsel for the City that:

(a) the Site has been designated as being subject to site plan control, pursuant to the *Planning Act*, s. 41; and (b) the Applicant has provided a registered survey plan outlining the lands to be rezoned to enable the City to confirm the schedule to the Revised Zoning By-law Amendment.

“Sharyn Vincent”

SHARYN VINCENT
MEMBER

If there is an attachment referred to in this document,
please visit www.elfo.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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