

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



ISSUE DATE: January 05, 2021

CASE NO(S): PL171265

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:	4135199 Canada Inc. Et Al
Subject:	Request to amend the Official Plan - Failure of the County of Wellington to adopt the requested amendment
Existing Designation:	Urban Centre
Proposed Designated:	Urban Centre
Purpose:	To permit a mixed use community consisting of residential, commercial, employment, institutional and open spaces uses
Property Address/Description:	Part of Lot 16 & 17 Concession 10 and Part of Lot 16, Concession 11
Municipality:	Town of Erin
Approval Authority File No.:	OP-2012-06
OMB Case No.:	PL171265
OMB File No.:	PL171265
OMB Case Name:	4135199 Canada Inc. Et Al v. Erin (Town)

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

Applicant and Appellant:	4135199 Canada Inc. Et Al
Subject:	Proposed Plan of Subdivision - Failure of the County of Wellington to make a decision
Purpose:	To permit a mixed use community consisting of residential, commercial, employment, institutional and open spaces uses
Property Address/Description:	Part of Lot 16 & 17 Concession 10 and Part of

Municipality: Lot 16, Concession 11
 Municipality File No.: Town of Erin
 OMB Case No.: 23T-12001
 OMB File No.: PL171265
 OMB File No.: PL171266

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

Applicant and Appellant: 4135199 Canada Inc. Et Al
 Subject: Application to amend Zoning By-law No. 07-67
 - Refusal or neglect of the Town of Erin to
 make a decision
 Existing Zoning: FD- Future Development
 Proposed Zoning: Site Specific (To be determined)
 Purpose: To permit a mixed use community consisting of
 residential, commercial, employment,
 institutional and open spaces uses
 Property Address/Description: Part of Lot 16 & 17 Concession 10 and Part of
 Lot 16, Concession 11
 Municipality: Town of Erin
 Municipality File No.: Z12-05
 OMB Case No.: PL171265
 OMB File No.: PL171302

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

Applicant and Appellant: 4135199 Canada Inc. Et Al
 Subject: Request to amend the Official Plan - Failure of
 the Town of Erin to adopt the requested
 amendment
 Existing Designation: Residential, Highway Commercial, Industrial,
 Future Development
 Proposed Designated: Site Specific (To be determined)
 Purpose: To permit a mixed use community consisting of
 residential, commercial, employment,
 institutional and open spaces uses
 Property Address/Description: Part of Lot 16 & 17 Concession 10 and Part of
 Lot 16, Concession 11
 Municipality: Town of Erin
 Approval Authority File No.: OPA D08
 OMB Case No.: PL171265
 OMB File No.: PL171301

Heard: December 15, 2020 by video hearing

APPEARANCES:

Parties

Counsel/Representative*

Equity Venture Group Corp. and
National Properties Inc.

M. Melling
M. McDermid
J. Cole

County of Wellington

P. Pickfield

Town of Erin

Q. Annibale
B. Ruddick

Credit Valley Conservation Authority

D. Di Berto*

Upper Grand District School Board

B. Teichman

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. TOUSAW ON
DECEMBER 15, 2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This hearing was held to consider the suitability of a settlement proposed by the Parties for a large, multi-use development plan on the northeast side of the Town of Erin (“Town”) in the County of Wellington (“County”).

[2] The appeals, carried forward by the current owners of the lands, Equity Venture Group Corp. and National Properties Inc. (“Appellants”), related to the absence of decisions by the County and Town within the statutory timeframes on applications for County Official Plan Amendment (“COPA”), Town Official Plan Amendment (“TOPA”), Town Zoning By-law Amendment (“ZBA”), and draft Plan of Subdivision (“SUB”).

[3] After the completion of several studies and numerous adjustments to the development plans resulting from public and agency comments, the Parties reached a settlement on the policies, regulations, layout and conditions for the development. During this time, an Environmental Assessment (“EA”) was completed, leading to the Minister of the Environment, Conservation and Parks (“MECP”) approval of a new waste water treatment facility (“WWTF”) for the Town.

[4] With due consideration to all requirements of the *Planning Act* (“Act”) and to the issues raised by the one Participant statement received, the Tribunal allowed the appeals in part and approved the TOPA, ZBA and SUB with conditions, as presented by the Parties. The COPA was withdrawn by the Appellants. The Tribunal’s reasons follow.

PARTY STATUS

[5] The Tribunal granted Party status to the Upper Grand District School Board (“School Board”) with the consent of the statutory Parties. The School Board had participated in the design discussions leading to an acceptable site in the SUB for a future elementary school.

[6] The Tribunal also granted Party status to the Credit Valley Conservation Authority (“CA”). The CA was under the impression that it was granted Party status at an earlier Case Management Conference (“CMC”) for these appeals, but with reference to past Tribunal Decisions, such status could not be confirmed. Further, the CA suggested it no longer required Party status as its issues were now adequately covered by the proposed conditions to the SUB. Out of an abundance of caution and at the request of the Town, the Tribunal granted Party status to the CA and did not grant its release. The Tribunal wished to have the CA available should matters pertaining to its jurisdiction arise in the hearing.

PARTICIPANT STATUS

[7] Ten persons had been granted Participant status in these matters at an earlier CMC. No written statements had been received from Participants by the Tribunal or the Parties in advance of this hearing.

[8] The Appellants, with agreement from the other Parties, explained that the notice of today's hearing indicated the potential for a settlement conference and directed that any document to be referred to must be filed five days in advance. The Appellants noted that s. 33(2) of the *Local Planning Appeal Tribunal Act* ("LPATA") prohibits oral submissions from Participants and requested that the hearing proceed.

[9] Some of the Participants were present on the video conference and the Tribunal offered them an opportunity to comment on the procedural matter of filing statements. No comments were received and the Tribunal was satisfied that the Participants understood the process.

[10] One additional request for Participant status was filed in advance of today by Ann Seymour, a resident in the neighbouring municipality, Town of Caledon. Ms. Seymour had filed a 12-page statement outlining her concerns with the development. The Parties had no objection to the granting of Participant status to Ms. Seymour and were prepared to respond to her issues in their planning evidence. The Tribunal granted Ms. Seymour Participant status and marked her written statement as an exhibit.

EVIDENCE

[11] The Tribunal heard from two Registered Professional Planners ("RPP"), both of whom had filed sworn affidavits, including signed copies of the Tribunal's Acknowledgment of Expert's Duty. With consent of all Parties, the Town called Elizabeth Howson, RPP and the Appellants called Keith MacKinnon, RPP (together,

“Planners”). The Tribunal qualified both of these experienced RPPs to provide opinion evidence in land use planning.

[12] In their oral and written evidence, the Planners describe the site and applications as follows. This 117 hectare (“ha”) property within the northeast corner of the Town will become a mixed-use neighbourhood of residential, commercial and industrial uses along with blocks for open space, natural heritage, an elementary school, water supply and stormwater management (“SWM”). Housing will include some 690 detached, 262 semi-detached, and 443 townhouse dwellings, along with the potential for 130 affordable housing apartment units and seniors’ accommodations. The commercial and industrial land uses are arranged for compatibility within the development and with adjacent, similar existing uses and highway access. Approximately 8 ha of the site are identified as “Deferred Lands” in the amendments, primarily to await the Town’s intended updates to its population and employment projections before final land use designations are established.

[13] The TOPA rearranges certain land use designations on the site to provide for a compatible arrangement of mixed uses, adds 6.75 ha as Greenlands designation, and defers development on 8 ha for further consideration following updated population projections. The ZBA applies suitable zoning and regulations for each of the designations identified in the TOPA, and the SUB sets out the street and lotting pattern. Finally, an extensive set of some 159 conditions to the SUB must be satisfied before final approval.

[14] Mr. MacKinnon explained the now absent need to amend the County Official Plan (“COP”). When originally filed in 2012, the COPA sought population allocations for the Town to accommodate this development. Since that time, the County updated its allocations for projected population to the year 2041, with which this development proposal conforms. The Appellants have now withdrawn their appeal to the COPA (Exhibit 5).

[15] Both Planners' affidavits provide their planning opinion on each of the legislative tests. Ms. Howson provided her summary testimony as follows, and Mr. MacKinnon confirmed his agreement with her evidence.

[16] The provincial documents, being the Provincial Policy Statement, 2020 ("PPS"), A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 ("GP") and the Greenbelt Plan, 2017 ("GBP"), are consistent in their support for growth in settlement areas on full services, promoting intensification, developing complete communities, supporting active transportation, enabling future public transit, providing a range of housing types, and protecting the natural heritage system. The development conforms with these policies through the arrangement and designation of land uses, a range of housing sizes and forms, and opportunities for affordable housing and seniors' accommodations.

[17] Similarly, the Planners conclude conformity with the COP and Town Official Plan ("TOP") policies. The site's accommodation of some 4,500 persons and blocks for employment uses provide a density of 58 persons and jobs per ha and 21 housing units per ha, well above the COP target of 40 and 16 respectively. In support of the county-wide goal for 25% of housing units to be affordable, this site will provide approximately 9% affordable units, not including the opportunity for smaller detached or semi-detached dwellings and relatively more affordable townhouses. Based on the detailed studies completed and extensive discussions among the Parties, the land use designation adjustments contained in the TOPA respect the cultural context, protect natural heritage features, and create a compatible mixed-use community. The central school site and dispersed park blocks support active transportation, and the community's integration with area roads allows for the possibility of future public transit.

[18] Finally, the Planners conclude that the SUB and draft plan conditions satisfy all requirements of s. 51(24) of the Act. Such criteria as the health, safety, convenience

and accessibility of inhabitants are all addressed in the site's layout and conditions, as are the suitability of uses, conservation of natural resources, transportation network and energy conservation.

[19] In summary, Ms. Howson and Mr. MacKinnon consider the requested instruments to have regard for the provincial interests of s. 2 of the Act, maintain the intent of the PPS, conform with the GP and GBP, conform with the COP and TOP, and suitably address the criteria of s. 51(24) of the Act.

[20] The Planners also answered questions from the Tribunal and counsel regarding the issues raised in Ms. Seymour's Participant statement. Ms. Seymour is a riparian landowner on the West Credit River, a downstream watercourse from the site, with concerns for the quantity and quality of water from this and other upstream developments. Given this site's location within the West Credit River subwatershed, Ms. Seymour's particular concern is the preservation of the cold-water Brook Trout habitat of the West Credit River.

[21] Both Planners confirmed that water quantity and quality considerations would have been considered in the EA conducted for the WWTF, and that similarly, safe water quantity and quality are normal considerations in the design of SWM facilities. Ms. Howson refers to Condition 15 requiring SWM in accordance with provincial standards and Condition 24 ensuring full commissioning of the WWTF. Mr. MacKinnon expands these references to include Conditions 7, 15, 19, 20 and 58 ensuring compliance with the MECP and the CA regulations for SWM; Conditions 16a, 17, 19 and 110b for erosion and sediment control; Condition 110c for water balancing; and Condition 111d for hydrogeological assessment. Mr. MacKinnon is satisfied that the extensive studies conducted to date for land use related water consumption and effluent, along with the mandatory compliance with provincial and local requirements in the conditions, result in the full consideration of the water quantity and quality concerns expressed by Ms. Seymour.

FINDINGS

[22] The Tribunal issued its oral approval of the requested instruments at the hearing, supported by brief oral reasons. The Tribunal's detailed reasons follow.

[23] The Tribunal begins its findings with the issues raised by Ms. Seymour. The Tribunal recognizes the legitimate and important issues raised by Ms. Seymour related to the preservation of rare fish habitat and compliments her on a thorough submission and probing questions. At the outset, the Tribunal notes that Ms. Seymour herself acknowledges the wide geographic range of upstream lands within the subwatershed, leading to her plea for improved water quantity and quality standards at the provincial level. Those matters are outside the jurisdiction of this Tribunal.

[24] To the matters affecting this site, Ms. Seymour questions the effect of the proposed urban development on the incidence of flooding, potential pollutants and temperature in the receiving tributary and downstream in the West Credit River. The Tribunal heard evidence that the potential sources of these concerns are the planned off-site WWTF and the proposed on-site SWM ponds.

[25] On the evidence of the Planners, the Tribunal notes that the WWTF has been approved by the MECP, after undergoing thorough review through an EA process. Although the development instruments before the Tribunal rely on the planned WWTF, the WWTF itself is not before the Tribunal. On the evidence, the Tribunal is satisfied that this development can and will be served by an approved WWTF to be built and operated in accordance with provincial standards. A policy in the TOPA and several conditions to the SUB ensure connection to the WWTF before occupancy occurs.

[26] The on-site SWM ponds are before the Tribunal as part of the SUB. Ms. Seymour raises questions about potential effects of SWM on the quantity and

quality of the receiving watercourse but provides no direct evidence that this may occur. In contrast, the Planners advise that some 10 conditions to the SUB ensure that SWM is provided in accordance with the standards and permits of provincial authorities. The Tribunal further notes that the CA is a Party in support of the proposed planning instruments, having been involved throughout the several years of planning and is now satisfied with the plan and conditions. The Tribunal considers the mandatory conditions for SWM, including sufficient size, suitable outlets, infiltration requirements, sediment control, construction impact mitigation and tree preservation, sufficiently demonstrate the competence of the approval agencies to ensure compliance with professional standards and regulated limits.

[27] The Appellants acknowledge that Ms. Seymour's concerns are genuine but argue that no evidence is provided to suggest that those concerns will materialize. In such a case, the Appellants refer to the Tribunal's Decision in *90 Eastdale Inc. v. Toronto (City)*, 2018 CarswellOnt 23319 wherein Member Sills states at paragraph 85:

The Tribunal has carefully considered the assertions and submissions of the Participants, and although the sincerity of their apprehensions is not in doubt, the Tribunal cannot decide an application on the basis of conjecture. Otherwise, many of the concerns expressed have either been addressed by the technical studies and in the evidence and materials of the expert witnesses; will be addressed as a matter of site plan approval; or, are not legitimate land use planning matters that can be considered by the Tribunal in the determination of this matter.

[28] The Tribunal accepts the Appellants' argument that the same approach is warranted here. In this case, the Planners' evidence explains how the concerns will be addressed, lists the conditions pertaining to those concerns, and reveals how the EA for the WWTF is not a matter before the Tribunal.

[29] The Tribunal thanks Ms. Seymour for her advocacy for healthy watercourses, but for the reasons above, the Tribunal does not find her concerns a barrier to the approval of these planning instruments.

[30] The Tribunal accepts the uncontroverted evidence of the Planners and finds that the TOPA, ZBA and SUB with conditions satisfy all legislative tests. They have suitable regard to provincial interests, are consistent with the PPS, conform with the GP and GBP, and conform with the COP and TOP. This development is envisioned and expected by the governing policies of the foregoing documents, with their inclusion of this site as part of the Town's settlement area, allocation of population and housing density, policies for a complete community on full services, a mix of uses including affordable housing, and the appropriate protection of natural heritage, including preserving green space and maintaining water quality. After several years of planning and discussion, the Parties all agreed to suitable plans and conditions for this large development, with no resulting opposition, other than the fair concerns raised by a Participant and satisfactorily answered by the Parties.

ORDER

[31] The Tribunal Orders as follows.

[32] The Appellants' withdrawal of their appeal related to their application to amend the County of Wellington Official Plan is confirmed and the Tribunal's file is closed.

[33] The Appellants' appeal related to their application to amend the Town of Erin Official Plan is allowed in part and the Town of Erin Official Plan is amended as set out in Attachment 1, except the areas identified as "Deferral Areas" are adjourned *sine die* to be brought back before the Tribunal upon the written request of the Appellants, County of Wellington and Town of Erin.

[34] The Appellants' appeal related to their application to amend the Town of Erin Zoning By-law No. 07-67 is allowed in part and Zoning By-law No. 07-67 is amended as set out in Attachment 2, except that the areas identified as "Deferral Areas" are

adjourned *sine die* to be brought back before the Tribunal upon the written request of the Appellants, County of Wellington and Town of Erin.

[35] The Appellants' appeal related to their application for Draft Plan of Subdivision is allowed in part and the Draft Plan of Subdivision is approved as set out in Attachment 3, subject to conditions of approval as set out in Attachment 4, except that the areas identified as "Future Development" are adjourned *sine die* to be brought back before the Tribunal upon the written request of the Appellants, County of Wellington and Town of Erin.

[36] Pursuant to s. 51(56.1) of the *Planning Act*, the County of Wellington shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of s. 51(58) of the Act. The Tribunal may be spoken to in the event of any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to the draft plan.

"S. Tousaw"

S. TOUSAW
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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