

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: May 13, 2022

CASE NO(S): OLT-22-002235

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

Appellant: Carlo Silvestri
Subject: To permit residential dwelling units of townhouses, maisonette units, and single detached dwellings (By-laws 21-238 and 21-249)

Municipality: City of Hamilton
OLT Lead Case No.: OLT-22-002235
OLT Case No.: OLT-22-002235
OLT Case Name; Silvestri v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion Request by: DiCenzo Construction Company Ltd. ("Applicant")
Purpose of Motion: Request for an Order dismissing the appeal
Appellant: Carlo Silvestri
Subject: To permit residential dwelling units of townhouses, maisonette units, and single detached dwellings (By-laws 21-238 and 21-249)

Municipality: City of Hamilton
OLT Lead Case No.: OLT-22-002235
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Heard: April 21, 2022 by video hearing

APPEARANCES:

Parties

DiCenzo Construction Company
Ltd. ("Applicant")

City of Hamilton ("City")

Counsel*/Representative

M. Helfand*
S. Zakem*

B. Duxbury*

Carlo Silvestri (“Appellant”)

Self-represented

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision dismisses the Appellant’s appeals to two Zoning By-law Amendments (“ZBAs”) for the failure of the appeals to satisfy certain legislative requirements, while simultaneously allowing the appeal of one of the ZBAs, at the Applicant’s request, only for the purpose of including two minor modifications to the ZBA.

BACKGROUND FACTS

[2] The Applicant plans to establish a residential development of some 221 dwelling units on a 6-hectare property at 311 and 313 Stone Church Road East (“site”), Hamilton.

[3] The City approved several applications of the Applicant, resulting in Official Plan Amendment 157 (“OPA”), ZBA 21-238, ZBA 21-249, draft approval for a Plan of Subdivision (“SUB”), and Site Plan Application (“SPA”). A related Plan of Condominium application will be considered for approval in due course.

[4] The Appellant is the sole appellant to the ZBAs. The City received no appeals to the OPA, SUB or SPA, and those documents are in full force and effect.

[5] The Appellant is a homeowner and resident in the neighbourhood to the east of the site. His concerns for the development include neighbourhood incompatibility, deficient range of housing types, inaccessibility of housing and parkland, increased traffic, and sewage and stormwater management.

[6] Despite efforts to retain professional assistance, the Appellant has been unable

to retain legal counsel or planning and engineering professionals in support of his appeal, but hopes to in preparation for a hearing on the merits.

[7] The Applicant seeks to dismiss the ZBA appeals and bring the ZBAs into effect, subject to two minor modifications to ZBA 21-249.

[8] The City supports the Motion to dismiss and takes no issue with the requested ZBA modifications which it considers to be minor, technical clarifications arising from recent review.

LEGISLATIVE CONTEXT

[9] The *Planning Act* (“PA”) and the *Ontario Land Tribunal Act* (“OLTA”) establish criteria for the consideration of dismissing an appeal without a full hearing on the merits.

[10] The City emphasizes s. 2.1 of the PA requiring the Tribunal to “have regard to” the decisions of the City Council related to the planning matter and the information it considered when making its decisions.

[11] The Applicant focusses on s. 34(25)(1) and (3) of the PA:

(25) Despite the *Statutory Powers Procedure Act* and subsection (24), the Tribunal may, on its own initiative or on the motion of any party, dismiss all or part of an appeal without holding a hearing if any of the following apply:

1. The Tribunal is of the opinion that,
 - i. the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,
 - ii. the appeal is not made in good faith or is frivolous or vexatious,
 - iii. the appeal is made only for the purpose of delay, or
 - iv. ...
2. ...
3. The appellant intends to argue a matter mentioned in subsection (19.0.1) but has not provided the explanations required by that subsection.

[12] Subsection 3 above refers to s. 34(19.0.1) of the PA:

(19.0.1) If the appellant intends to argue that the by-law is inconsistent with a policy statement issued under subsection 3 (1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the notice of appeal must also explain how the by-law is inconsistent with, fails to conform with or conflicts with the other document.

[13] For the case at hand, the Applicant emphasizes the OLTA provision of s. 19(1), where, after hearing submissions, the Tribunal may “dismiss a proceeding without a hearing”:

(c) if the Tribunal is of the opinion that the proceeding has no reasonable prospect of success.

[14] On its request that the Tribunal approve a modified version of ZBA 21-249, the Applicant refers to s. 34(26)(b) of the PA:

(26) The Tribunal may,

...

(b) on an appeal under subsection (11) or (19), amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order.

[15] With reference to the Court and Tribunal Decisions provided by the Applicant, the Tribunal accepts as follows.

[16] The grounds for dismissing an appeal are disjunctive: only one of the several grounds set out in the PA and OLTA must be satisfied to warrant dismissing an appeal (*Zellers Ltd. v. Royal Cobourg Centres Ltd.* [2001] O.J. No. 3792 (Div. Ct), para. 8).

[17] The Appellant must respond by demonstrating that there are “genuine, legitimate and authentic planning reasons” warranting a hearing on the merits (*Toronto (City) v. East Beach Community Association* [1996] OMBD No. 1890, 42 OMBR 505, para. 9).

[18] As Member Jackson stated in *Todaro v. Wasaga Beach (Town)*, 2019

CarswellOnt 4551 (LPAT), para. 34, “an appellant must do more than ‘simply raise apprehensions’ ... in the face of a motion to dismiss.” At para. 31, Member Jackson summarized that:

31 Simply put, the Appellant has a responsibility to demonstrate at the motion hearing that there are sufficient and legitimate planning grounds that underlie the appeal, and to show the prospect of evidence that could sustain their appeal at a hearing.

[19] In short, these provisions require the Appellant to establish a legitimate planning matter at issue, supported by a reasonable prospect of evidence to be called at a hearing.

ISSUES and FINDINGS

[20] To the Appellant’s issues summarized in para. 5 above, the Applicant argues that no evidence was provided in the Appellant’s email Responses to this Motion to substantiate the appeal. These issues were raised during the City’s public consultation process and considered in the City’s review and findings that the ZBAs were suitable for approval. Neighbourhood opposition was fully considered in the City’s review and approval of the ZBAs and related applications.

[21] The Applicant notes that the neighbourhood plan referred to by the Appellant is not an official plan with which conformity is required, but such plan was applied and the development, including townhouses, were found by the Applicant and the City to respond sufficiently to the neighbourhood plan.

[22] No evidence was proffered in support of the Appellant’s concern for a lack of diversity in the proposed housing. With reference to its planning evidence filed, the Applicant submits that rental housing cannot be secured through a ZBA, some units may be offered on the rental market, and the variety of unit types proposed are standard forms of housing in the City and will contribute to the OP’s density target.

[23] To the Appellant’s concern for the location and accessibility of the woodland as

park dedication, the Applicant advises that the park dedication is addressed by the OPA to which no appeal was lodged. The parkland zoning in the ZBAs conforms with the OP as amended.

[24] The Appellant's concerns for traffic relate, in part, to possible development of other vacant properties in the area. The Applicant replies that other development proposals will be viewed on their merits when known, are not relevant to the ZBAs, and traffic matters are addressed to the City's satisfaction through the draft approved plan of subdivision with conditions.

[25] The Appellant's Response emails included opposition letters to the City, a signed petition, and summary information pertaining to "family friendly housing" being considered by the City. The Applicant again replies that public consultation is already contained in the City's records, the housing report is under development and not relevant today to these ZBAs, and consequently, no genuine planning issues have been identified or supported by the Appellant.

[26] The Applicant submits that no explanation has been provided by the Appellant on how the ZBAs fail to be consistent with the PPS or fail to conform with the OP. With no valid grounds raised and no expert relied upon or to be called, the Applicant argues that the appeal is frivolous, that is, not reasonable, and/or vexatious, being a disruption without purposeful intent.

[27] During this Motion hearing, the Appellant referred to several sections of the PPS, to which the Applicant responded that it demonstrated the evolving nature of this appeal, with unconnected issues unfolding during the process.

[28] All tolled, the Applicant submits that the Appellant's approach and unsupported issues have no prospect of success at a hearing on the merits, and should be dismissed under s. 19(1)(c) of the OLTA.

[29] The Tribunal finds for the Applicant and will grant the Motion to dismiss the

appeal.

[30] While the Appellant raises apparent land use planning issues in words, he fails to substantiate those issues with reasonable grounds and the likelihood of professional evidence. Despite being unable to date to retain legal and professional assistance, he continues to hope to find such in advance of a hearing on the merits, while also expressing concern for his costs in the absence of confirmed neighbourhood support for the case.

[31] The Appellant does plan to call neighbourhood residents as witnesses at the hearing, as well as City staff. The Tribunal finds this position to further confirm “no reasonable prospect of success.” Neighbours might explain their concerns at a hearing, which are already contained within the City’s record, but the City’s professional planning staff supports these ZBAs. Absent the unlikely prospect of the Appellant finding and retaining a professional planner supportive of his position, the City staff’s evidence may be cross-examined but will remain uncontested.

[32] Despite the Appellant’s asserted familiarity with planning processes, he limited his appeals to the ZBAs while several of the issues raised pertain more appropriately to the OPA or plan of subdivision. The Tribunal accepts the Applicant’s argument that the ZBAs implement the details of a development plan that is founded in the OPA and plan of subdivision. Without these foundational documents at play in a hearing, the ZBAs are unlikely to be altered by the Tribunal.

[33] The Tribunal accepts that the Appellant is genuinely concerned with this development near his home and the changes it may bring to the community. However, the existence of a person’s fears, concerns or beliefs are not themselves sufficient to sustain an appeal. The resulting issues must be genuine matters of planning for which the prospect of success has been established, preferably by professional support.

[34] On the provisions of s. 34(25)(1)i of the Act, the Tribunal finds that the Appellant’s reasons fail to disclose any apparent land use planning ground upon which

the Tribunal could allow all or part of the appeal. The Tribunal finds that the Appellant has failed to substantiate issues related to provincial policies as required by s. 34(25)(3) of the Act. In addition, the Tribunal finds that the appeal has no reasonable prospect of success and may therefore be dismissed under s. 19(1) of the OLTA.

[35] Only one of the foregoing reasons must be found to dismiss an appeal. Here, the Tribunal has more than one basis to dismiss the appeals to both ZBAs.

[36] At the same time, on the planning evidence, the Tribunal will allow the appeal in part for ZBA 21-249 for the sole purpose of adding two minor provisions for which the Tribunal is satisfied meet all statutory tests and represent good planning in the public interest.

[37] The Tribunal finds that s. 34(25)(1)ii and iii of the Act are not offended by this Appellant, having accepted that the issues raised are of genuine concern to him and not raised for frivolous, vexatious or delay reasons. As such, the Tribunal will not prevent, but will caution the Applicant on its notice of a potential Motion for Costs. At this time, in the absence of further evidence, the Tribunal is satisfied that the Appellant proceeded to this stage of the planning process in pursuit of changes he believed could and should be addressed, without fully understanding the role and function of the ZBAs in this case or appreciating the extent of support and justification required to proceed on appeal.

ORDER

[38] The Tribunal Orders that:

- a. the appeals by the sole Appellant, Carlo Silvestri, are dismissed; and
- b. City of Hamilton Zoning By-law No. 21-238 and Zoning By-law No. 21-249 come into force, except that Zoning By-law No. 21-249 is amended as set out in Exhibit 1, Tab U; and

- c. The City Clerk may number and reformat the Zoning By-laws if necessary for record keeping purposes.

“S. Tousaw”

S. TOUSAW
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.