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

ISSUE DATE: May 17, 2019 **CASE NO(S).:** PL180725

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

Appellant:	Rachel Raymond
Subject:	By-law No. 2020.395
Municipality:	City of Burlington
LPAT Case No.:	PL180725
LPAT File No.:	PL180725
LPAT Case Name:	Raymond v. Burlington (City)

Heard: February 12, 2019 in Burlington, Ontario

APPEARANCES:

Parties	**Counsel**
Rachel Raymond	A.J.M. Baroudi
City of Burlington	B. Hurley

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

INTRODUCTION

[1] This decision arises from a Case Management Conference ("CMC") conducted on February 12, 2019 in Burlington. The proceeding concerns an appeal brought by

Rachel Raymond (“Appellant”) under s. 34(19) of the *Planning Act* regarding a proposal by Bloomfield Developments Inc. (“Applicant”) to construct 20 residential dwellings, including two single detached units, four semi-detached units, and 14 condominium townhouse units on lands located at 5219 Upper Middle Road, 2004 Georgina Court, 2005 Georgina Court and Block 262 and Block 263 in Plan 20M-824 (“subject lands”).

[2] To facilitate its proposal, the Applicant applied to the City of Burlington (“City”) for a Zoning By-law Amendment, which was approved by City Council on July 16, 2018.

[3] On August 8, 2018, Ms. Raymond appealed the decision to the Local Planning Appeal Tribunal (“Tribunal”).

[4] This was the first CMC concerning the appeal. At the CMC, the Tribunal addressed matters set out in s. 33(1) of *Local Planning Appeal Tribunal Act, 2017* (“LPAT Act”) and Rule 26.20 of the Tribunal’s *Rules of Practice and Procedure* (“Rules”).

REQUESTS FOR STATUS

[5] The LPAT Act requires any person who wishes to participate at the hearing of an appeal to file a request 30 days before the CMC. To be granted, requests for party or participant status in zoning by-law amendment appeals must include submissions respecting whether the decision in question was inconsistent with a provincial policy statement, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan. Section 40(1) and (2) of the LPAT Act states:

> 40 (1) If a person other than the appellant or the municipality or approval authority whose decision or failure to make a decision is being appealed wishes to participate in an appeal described in subsection 38(1) [which includes appeals under s. 34(19)], the person must make a written submission to the Tribunal respecting whether the decision or failure to make a decision,
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> (a) was inconsistent with a policy statement issued under subsection 3 (1) of the *Planning Act*;

(b) fails to conform with or conflicts with a provincial plan; or

(c) fails to conform with an applicable official plan.

40 (2) The submission must be made to the Tribunal at least 30 days before the date of the case management conference.

[6] In the present case, the Tribunal received one set of submissions for status that meets these requirements. These were the submissions filed by Ryan and Eunice Brez on January 10, 2019 seeking Participant status. At the CMC no party objected to the granting of Participant status to these individuals. Based on the submissions received, the Tribunal granted them Participant status.

[7] The Applicant and Peter Hill each requested Party status at the CMC. Each filed a written request for status 30 days prior to the CMC, but neither included submissions respecting whether the proposed Zoning By-law Amendment is inconsistent with a policy statement, fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan. Each argued that it is implicit from their requests that their concerns regarding the appeal address issues of consistency and conformity. The Applicant submitted that its request specifically states that it supports the City's position, which it argued implies that it adopts the City's positions on consistency and conformity. Mr. Hill made a similar argument, stating that it is implicit from his request for status that he adopts the position of the Appellant, who is his daughter.

[8] The Applicant also seeks to bring a motion to dismiss the appeal.

[9] The Tribunal recognizes the interests of these persons in the appeal. However, the Tribunal is unable to grant status to persons except as permitted under the LPAT Act. As noted above, s. 40(1) of the Act requires that persons seeking status must make the required written submissions on consistency with a policy statement and conformity with applicable provincial plans or official plans. The Tribunal is not being technical or rigid when it requires compliance with the Act. The Tribunal has no flexibility in the application of mandatory statutory requirements. Although s. 34(26.11)

of the Planning Act contemplates a role for an applicant party in the settlement of zoning by-law amendment appeals in applicable situations, the Tribunal finds that this does not mean that an applicant is automatically made a party and does not need to comply with the LPAT Act requirements. The applicant must still comply with the requirements in the LPAT Act in order to be granted status.

[10] In the present case, neither the Applicant nor Mr. Hill complied with the requirements in s. 40(1) of the LPAT Act and their requests for status are denied. As the Applicant is not a party, it does not have status to bring a motion to dismiss.

EVIDENCE FOR THE HEARING

[11] The Appellant stated that she was unable to retain a planner prior to filing her Case Synopsis. She stated that her Synopsis includes an affidavit sworn by Kevin Rutherford who is a civil engineering technologist. He is not a land use planner. The Appellant stated that she intended to retain the services of a land use planner to support her arguments, but did not have sufficient time to do so prior to filing her Case Synopsis and Appeal Record. She stated that the timelines under the Rules are tight and the process is difficult to navigate. She submitted that Rule 26.23 allows the Tribunal to direct a party to deliver affidavit evidence after a CMC and requested that the Tribunal allow her to file additional evidence under this Rule.

[12] The City submitted that it would be improper and not permitted by the Tribunal's Rules to allow new opinion evidence that expands on the Appellant's issues and arguments and that the Appellant has no right to do so. The City submitted that the Appellant had ample time to retain a planner, but chose not to retain one. It argued that Rule 26.12 clearly states that opinion evidence is to be filed as part of the Appeal Record and it would be unfair to permit the Appellant to file an additional affidavit as the City would not have a proper opportunity to respond. It submitted that Rule 26.23 is intended to be used where additional issues arise from the materials already filed; not where a party has neglected to retain a planner and wishes later to file land use

planning opinion evidence.

[13] The LPAT Act and its regulations make changes to the planning appeal process which speed up the appeal decision making process. Ontario Regulation 102/18 under the Act sets specific timelines for the adjudication of Planning Act appeals, including a ten month timeline for the appeal of zoning by-law amendments. To facilitate the timely resolution of appeal proceedings as envisioned by the LPAT Act and its regulations, the Tribunal's Rules set out an orderly procedure for the service and filing of documents. Rule 26.11 requires an appellant to file an appeal record, which under Rule 26.12 shall contain an affidavit setting out material facts and, where applicable, opinion evidence, within 20 days of receipt of notice from the Tribunal that the appeal is valid. Rule 26.23 permits the Tribunal to direct after a CMC that a party deliver affidavit evidence to address issues in dispute in order to ensure a fair, just and expeditious resolution of the dispute.

[14] In the present case, the Tribunal recognises that the Appellant made efforts to retain a land use planner and file land use planning opinion evidence with her Appeal Record. Her reasons for failing to serve and file such evidence were that the timelines are tight and the process is difficult to navigate. The Tribunal finds that these are not compelling reasons for departing from the requirements in the Rules. Given the timelines set out in the LPAT Act and its regulations and the need for a fair, just and expeditious process, the Tribunal denies the Appellant's request to file supplemental evidence.

ISSUES

[15] The Tribunal canvassed the Parties regarding the identification, definition and narrowing of the issues raised in the appeal. The City stated that the Appellant's notice of appeal only sets out grounds for appeal relating to inconsistency with the Provincial Policy Statement, 2014 ("PPS") and failure to conform with an applicable Official Plan. It submitted that conformity issues with the Growth Plan for the Greater Golden Horseshoe, 2017 ("Growth Plan") and with the Halton Region Official Plan were not

raised in the notice of appeal and should not be added now or adjudicated. It further submitted that issues in the Appellant's Case Synopsis regarding traffic, access, privacy, sun blocking, parkland, parking and density are not appropriate. The City also submitted that issues regarding conformity with the City's new Official Plan (which was not yet in-force at the time of the passage of the proposed zoning by-law amendment) also should not be adjudicated.

[16] The Appellant argued that the Growth Plan and Regional Official Plan are relevant and should be considered by the Tribunal. She submitted that the issues relating to traffic, access, privacy, sun blocking, parkland, parking and density relate to the issue of compatibility, which is relevant to the question of conformity with the City's Official Plan.

[17] Section 34(19.0.2) sets out the required content of a notice of appeal, which in turn sets out the scope of the appeal. Section 34(19.0.2) states:

> (19.0.2) A notice of appeal under subsection (19) shall explain how 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.

[18] Based on this requirement, the Tribunal will only consider the issues arising from the grounds addressed in the notice of appeal. In the present case, these grounds are whether the proposed zoning by-law amendment is inconsistent with the PPS and whether it fails to conform with applicable official plans. As grounds relating to conformity with the Growth Plan were not raised in the notice of appeal, Growth Plan issues are not issues to be adjudicated in this proceeding. Issues relating to the grounds of non-conformity with the applicable official plans will be adjudicated.

[19] With respect to issues of traffic, access, privacy, sun blocking, parkland, parking and density, the Tribunal finds that they relate to the ground of non-conformity with the City's Official Plan, which is one of the grounds of appeal. These issues, therefore, are proper issues for adjudication in this proceeding.

MEDIATION AND SETTLEMENT

[20] The Tribunal canvassed the Parties on opportunities for settlement and the possibility of mediation as required by s. 39(2) of LPAT Act. The Parties stated that they have engaged in some settlement discussions and are open to pursuing further discussions. They both stated that this is not a case that is amenable to mediation.

HEARING

[21] The City submitted that the records and synopses that have been filed are sufficient materials upon which the Tribunal may make its decision and that this is an appropriate case for a written hearing. It submitted that an oral hearing is not necessary. The Appellant agreed, stating that unless the Tribunal wishes to examine a witness, the appeal should be heard in writing.

[22] Based on the materials before the Tribunal and the submissions of the Parties that a written hearing is appropriate, the Tribunal directs that the hearing be held in writing based on the written materials that have already been served and filed.

[23] This is the order of the Tribunal.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

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