

ISSUE DATE:

January 14, 2014



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

RECEIVED

JAN 16 2014

CITY OF MARKHAM
CLERKS DEPT.

PL120685

C: Lucy
Stacia Myradali
c of A.

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

Appellant: James Jagtoo & Stephen Emmanuel
Applicant: Peter Casagrande, Corinne Marton and Cristos Pavlakis
Subject: By-law No. 2012-114 and By-law No. 2012-116
Municipality: City of Markham
OMB Case No.: PL120685
OMB File No.: PL120685 (By-law No. 2012-114) and PL120686 (By-law No. 2012-116)

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: James Jagtoo & Stephen Emmanuel
Applicant: Peter Casagrande, Corinne Marton and Cristos Pavlakis
Subject: Proposed Official Plan Amendment No. OPA 198 and OPA 199
Municipality: City of Markham
OMB Case No.: PL120685
OMB File No.: PL120891 (OPA 198) and PL120892 (OPA 199)

IN THE MATTER OF subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: James Jagtoo & Stephen Emmanuel
Applicant: Brutto Consulting
Subject: Consent
Property Address/Description: 39 Carolwood Crescent, 65 & 69 Chatelaine Drive
Municipality: City of Markham
Municipal File No.: B27/12, B28/12 and B29/12
OMB Case No.: PL120685
OMB File No.: PL121141 (B27/12), PL121142 (B28/12) and PL121143 (B29/12)

APPEARANCES:

Parties

Counsel*

Peter Casagrande, Corinne Marton and
Antonia Pavlakis

T. Pochmurski*

City of Markham

A. Wilson-Peebles*

Stephen Emmanuel and James Jagtoo

A. Alati*
Alexander Suriano* and
Andy Margaritis (student-at-law)

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

BACKGROUND

[1] Cristos Pavlakis passed away between the time of the applications and this hearing. Antonia Pavlakis has assumed the application and the Board adds her as a party to these proceedings.

[2] Peter Casagrande, Corinne Marton and Antonia Pavlakis ("Proponents") each own an existing lot in an area known as the Rouge River Estates ("Estates") in the City of Markham ("City").

[3] Peter Casagrande owns 69 Chatelaine Drive, Corinne Marton owns 65 Chatelaine Drive and Antonia Pavlakis owns 39 Carolwood Crescent.

[4] Each proponent wishes to divide each its lot into two lots. Each lot is to contain one single-family detached dwelling.

[5] To implement these intentions, applications were made for site-specific amendments to the City's Official Plan ("OP"), specifically to the North Rouge Secondary Plan ("OPA 81"). Applications were also made for site-specific amendments to the zoning by-law and for consent to sever each of the three existing parcels.

[6] The City adopted the site-specific official plan amendments and the site-specific zoning by-law amendments. The City of Markham Committee of Adjustment granted the applications for provisional consent, subject to conditions.

[7] The Region of York ("Region") is the approval authority for OP amendments. The Region approved both site-specific amendments to the City's OP.

[8] 39 Carolwood Crescent is on the northeast corner of Carolwood Crescent and Chatelaine Drive. James Jagtoo lives at 37 Carolwood Crescent and is the immediate neighbour to the east of Ms. Pavlakis.

[9] 65 and 69 Chatelaine Drive are adjacent properties on the west side of Chatelaine Drive. Stephen Emmanuel lives at 61 Chatelaine Drive which is the immediate neighbour to the south of the lot owned by Ms. Marton at 65 Chatelaine Drive.

[10] James Jagtoo and Stephen Emmanuel ("Appellants") have appealed the official plan amendments, zoning by-law amendments and consents to this Board.

[11] The Board heard from four expert witnesses. Randal Dickie, Stacia Muradali and Scott Burns who are all full members of the Canadian Institute of Planners and Registered Professional Planners in Ontario. The Board qualified each of these witnesses to provide the Board with independent expert opinion evidence in land use planning matters. The Board also heard from James Ziegler, whom the Board qualified to provide independent expert opinion evidence as a computer imaging specialist. Each of these witnesses executed the Board's acknowledgement of expert's duty form.

[12] The Board also heard from two lay witnesses called by the Appellants: Stephen Emmanuel, the current owner of 61 Chatelaine Drive, and Hedley Thomas, the former owner of 61 Chatelaine Drive.

[13] Mr. Emmanuel spoke movingly about the beauty of the area and the special feeling one gets as one walks or drives north on Chatelaine Drive, passing his property and continuing on to the intersection of Chatelaine Drive and Carolwood Crescent.

[14] Mr. Emmanuel's principal concern was compatibility and whether the special character of this area could be maintained with the introduction of smaller lots on Chatelaine Drive.

[15] Mr. Thomas testified that he is a land speculator. He advised the Board that attempts to create smaller lots in the late 1990's were denied. As such, he felt the requirement for the minimum lot sizes set out in OPA 81 could not, and should not, be altered. Mr. Thomas was candid in saying that he felt that if the smaller lots were now to be permitted, that he was being unfairly denied the financial benefit of smaller lots which he would otherwise have had if smaller lots had been permitted when he owned land in the area.

ANALYSIS AND FINDINGS

Rouge North Secondary Plan: OPA 81

[16] The Estates are in the northeast part of an area bounded roughly on the east by the Rouge River, on the south by 14th Avenue, on the west by Markham Road and on the north generally by Highway 407. Chatelaine Drive runs approximately north-south in approximately the middle of this quadrant.

[17] The original Estates subdivision was built in the 1950's on large lots with private services. The lots within this section generally front on Carolwood Crescent which curves to east of Chatelaine Drive with its start and its finish both on Chatelaine Drive but at different points. A spur, called Palatin Court, is a dead end that probes east from the far point of the eastern curve of Carolwood Crescent.

[18] The houses in this area vary in size and style and the lots tend to be a bit irregular in shape as a result of the curve of Carolwood Crescent and the cul-de-sac of Palatin Court. Several of these lots include Rouge River valley lands or back on to these lands.

[19] When the original subdivision was built, Chatelaine Drive acted as a community collector for access between Carolwood Crescent and 14th Avenue. Development on Chatelaine Drive itself did not occur until the 1990s.

[20] OPA 81 was adopted by the Town of Markham, now City of Markham, in 1988 and approved in 1989.

[21] The introduction to OPA 81 sets out the general plan concept. In s. 5.1, the original Estates subdivision is described as follows:

Another significant feature of the community design is the recognition of the existing Chatelaine Drive area which was originally developed as a RURAL RESIDENTIAL area, and is now being incorporated into the Rouge North community under the URBAN RESIDENTIAL designation. Policy provision is made to protect the Chatelaine Drive area as a distinct residential enclave, and to ensure that new residential development adjoining this area is compatible in character.

[22] OPA 81 identified three distinct Special Policy Development Areas ("SPDA"), two of which are relevant to these proceedings.

[23] Performance standards like lot sizes are commonly found in zoning by-laws. OPA 81 includes minimum lot sizes in the two SPDAs that are relevant for these proceedings.

[24] SPDA 1 is the original enclave of development on Carolwood Crescent and Palatin Court. SPDA 1 applies to 39 Carolwood Crescent.

[25] To implement the plan concept, OPA 81 set a minimum lot size of 0.4 ha in SPDA 1. Although there is no clear justification for the specific selection of 0.4 ha, the Board notes that this enclave was built entirely on private services which, in turn, require larger lots.

[26] SPDA 2 is a corridor that runs south along the west side of Chatelaine Drive and then curves east along the north side of Promelia Court. SPDA 2 applies to the two subject properties on Chatelaine Drive.

[27] Promelia Court is south of the southern access of Carolwood Crescent. It extends east of Chatelaine Drive, ending in a cul-de-sac similar to the street configuration of Palatin Court which runs east off Carolwood Crescent to the north of Promelia Court.

[28] OPA 81 set the minimum lot size for lots in SPDA 2 as 0.3 ha. Here again there is no clear justification in OPA 81 for the specific selection of 0.3 ha, especially since lots in this area were to be developed on full municipal services.

[29] In the absence of a clear justification for the selection of 0.3 ha, the Board looks to the plan concept for assistance. A reasonable reading of the plan concept in s. 5.1, set out above, is that the minimum lot area of SPDA 1 is the provision "...to protect the Chatelaine Drive area as a distinct residential enclave..." and the minimum lot area of

SPDA 2 is "...to ensure that new residential development adjoining this [SPDA 1] area is compatible in character..."

[30] A great deal of low density single-family residential development has occurred in this quadrant west and south of SPDA 2. The lots in this area vary in size but are all much smaller than the 0.3 ha OPA 81 sets for SPDA 2.

[31] By reference to Exhibit 5 as filed in these proceedings, the rear lot widths of the SPDA 2 lots on the west side of Chatelaine Drive are roughly equivalent to more than 3 rear yard widths of the smaller lots that are adjacent to the west.

[32] SPDA 2 is not a buffer between the enclave in SPDA 1 and the newer development further to the west and south.

[33] Buffers separate incompatible uses, for example a wetland and the excavation zone of a quarry. There is nothing incompatible between two areas of low density single family residential development that happen to be on vastly differently sized lots. The more appropriate descriptor for SPDA 2 is that of a transition area between SPDA 1 and the new development on much smaller lots to the west and south.

39 Carolwood Crescent Applications

[34] Antonia Pavlakis owns 39 Carolwood Crescent. This lot is one of the original lots in the Estates and is within SPDA 1. The lot sits on the northeast corner of the northern intersection of Carolwood Crescent and Chatelaine Drive. There is an existing house on the lot that faces Carolwood Drive.

[35] This lot does not back on to the Rouge River valley lands. Its rear lot boundary is adjacent to provincially held lands that are part of a reserve for a possible future transit-way associated with Highway 407.

[36] The proposal for 39 Carolwood Crescent is to sever the rear yard. The new lot would have its frontage on Chatelaine Drive.

[37] The Board understands that the existing house would remain and continue to face Carolwood Crescent. For zoning purposes, the smallest dimension is counted as the frontage. If the rear yard is severed, the frontage for zoning by-law purposes for the retained lot would be Chatelaine Drive.

[38] Since the existing house on the retained lot would continue to face Carolwood Crescent, the Board heard no evidence of any impact on the streetscape of Carolwood Crescent.

[39] The current zoning for 39 Carolwood Crescent is found in by-law 304-87. The zoning is RRE, Rural Residential Estate. The minimum lot area reflects OPA 81 and is 0.4 ha. The minimum lot frontage is 36.5 m.

[40] OPA 198 and by-law 2012-114 would allow two lots, each 0.2 ha in size. The lot to be severed would have a frontage of 29 m. The retained lot would have a frontage of 31.4 m. Site-specific by-law 2012-114, which reduces the minimum lot area to 0.2 ha and the minimum lot frontage to 29 m, also has a holding provision that requires a site plan and executed site plan agreement, to the satisfaction of the municipality, for any new buildings or structures. No site plan is before the Board in these proceedings.

[41] Finally, there is the application for consent to create the new lot by severing the rear of the existing lot.

65 and 69 Chatelaine Drive Applications

[42] Corinne Marton owns the lot at 65 Chatelaine Drive and Peter Casagrande owns the adjacent lot at 69 Chatelaine Drive. Both of these lots are vacant land and both are within SPDA 2.

[43] By-law 90-81 zones these lots SUR1, Suburban Residential First Density. The minimum lot area reflects OPA 81 and is 0.3 ha. The minimum lot frontage is 50 m.

[44] OPA 199 and by-law 2012-116 would allow each lot to be divided into two lots of 0.15 ha each. The site-specific by-law would reduce the minimum lot frontage to 29 m.

[45] By-law 90-81 requires a minimum side yard setback of 3 m. By-law 2012-116 carries this forward and adds the requirement that the combined side yard setbacks on the lot must be 7 m. By-law 2012-16 also has a holding provision that requires a site plan and executed site plan agreement to the satisfaction of the municipality for any new buildings or structures.

[46] Finally, there are two applications for consent to divide each of these existing lots into two lots.

Provincial Policy Statement

[47] The Provincial Policy Statement ("PPS") encourages development within settlement areas and emphasizes the importance of optimizing the use of land and infrastructure. The PPS also calls for the development of a range and mix of housing within communities.

[48] The subject lands are within an urban settlement area with full municipal services. The Board finds that the proposed official plan and zoning by-law amendments and the applications for consent to convey are consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe

[49] The Growth Plan for the Greater Golden Horseshoe ("GGH") also stresses the importance of optimizing the use of land and infrastructure to secure appropriate development within settlement areas that form complete communities.

[50] The Board finds that the proposed official plan and zoning by-law amendments and the applications for consent to convey conform to the GGH.

Region of York Official Plan

[51] The Region of York Official Plan ("ROP") designates the subject lands as within an urban area.

[52] Section 4.3.6 of the ROP deals with the provision of housing:

To encourage housing to be provided when opportunities for redevelopment become available. This includes redevelopment of existing single-use and under-utilized areas with full municipal services, such as ... older...residential areas...Special attention shall be paid to the design of building, the landscaping treatment and features of sites to make sure proposals are physically compatible with the surrounding community.

[53] The Board finds that the requirement that development be compatible is not a requirement that development be the same as what surrounds it. In these cases, the proposed developments are for single-family residential units that are surrounded by single-family residential units. The fact that there are different lot sizes does not create incompatibility. It is also not necessary for a transition area to have all lots of the same size in order for any individual lot to fit into the neighbourhood.

[54] Securing appropriate setbacks, design and landscaping treatment can enable an appropriate fit of these differently sized lots in the transition area between the much smaller lots to the west and south and the larger lots to the east.

[55] The proposed zoning by-law amendments each contain a holding (H) provision that requires a site plan and executed site plan agreement. The site plan will be able to secure those design and landscaping features to meet the requirement of physical compatibility with the surrounding community.

[56] The Board finds that the proposed official plan amendments, the proposed zoning by-law amendments and the applications for consent to convey that are before the Board conform to the ROP.

City of Markham Official Plan

[57] The City OP designates the subject sites as within an urban area.

[58] Section 2.7 sets out the policies for land severance. Section 2.7.1(b) requires:

- Compatibility with adjacent lots in terms of size, shape and the proposed use
- Access to the site from a public road and
- Appropriate services.

[59] The Board finds that the size, shape and proposed use of the lots are compatible with the surrounding lots and appropriate to this transition area.

[60] Access for all the lots is from a public road and meets the requirement of s. 2.7.1(b)(ii).

[61] Full municipal services are all existing and available. The Board finds that the requirement of s. 2.7.1(b)(iii) is met.

[62] Section 2.7.2 has special provisions for urban areas. Section 2.7.2(b) states:

Severances will be considered for the purpose of infilling in an existing urbanized area, but shall not extend the existing urbanized area. Infilling which economizes the use of urban space without disturbing the pattern of the existing development, or perpetuating an undesirable pattern of development

or prejudicing the pattern of future development, shall be considered acceptable.

[63] The proposals are to infill an existing urbanized area and do not extend the existing urbanized area. The infilling that is proposed makes economical use of the urban space and does not disturb the pattern of existing development, perpetuate an undesirable pattern of development or prejudice the pattern of future development.

[64] The proposed infilling is for single family detached housing in a transition area between smaller residential lots and larger residential lots.

[65] Section 2.13.1 deals with residential intensification and infilling. Section 2.13.1(m) speaks to support for residential intensification in developed area within the urban service area, which this is.

[66] Section 2.13.1(n) sets out the criteria for assessing infill development. The criteria includes meeting locational and other criteria of the OP, compatibility with adjacent development, determining that existing water and sewer can accommodate the development, and existing community and recreational facilities are adequate to meet the demand from the development.

[67] The Board finds that the applications before the Board meet the criteria set out in s. 2.13.1(n) of the OP.

[68] The Board finds that the proposed official plan amendments conform to the policy regime of the OP. The Board further finds that the applications for consent to convey and the zoning by-law amendments meet the requirements of, and conform to, the OP as amended by the proposed official plan amendments.

Matters of Provincial Interest

[69] Section 2 of the *Planning Act*, R.S.O. 1990 c. P.13, sets out the matters of provincial interest the Board must have regard to when carrying out its responsibilities under the Act.

[70] Having considered the matters set out in s. 2, the Board finds that the applications before the Board appropriately implement matters of provincial interest particularly:

- 2(f) the efficient use of municipal services
- 2(h) the orderly development of communities
- 2(j) the adequate provision of a full range of housing and
- 2(p) the appropriate location of growth and development

Additional Criteria for Considering the Division of Land

[71] Section 51(24) of the Act sets out criteria to be considered in applications that involve the division of land.

[72] Having reviewed the criteria, the Board finds that the applications for consent to convey meet the requirements of s. 51(24), in particular subsections:

- (a) dealing with matters of provincial interest
- (c) conformity with applicable official plans
- (d) suitability of land for the development purpose
- (f) dimensions and shape of the lots
- (g) restrictions on the land and
- (i) adequacy of utilities and municipal services.

Decisions of Council and Approval Authority

[73] Section 2.1 of the Act requires the Board to have regard to the decision of Council, the decision of the approval authority, and to any supporting material before Council or the approval authority when the decision was being made.

[74] In addition to reports from staff and the proponents which supported the applications, submissions from the expert planning witness called by the appellants were also before Council. While there was some visual evidence that elaborated on the points in materials and submissions made to Council, the Board finds that the City had a full set of submissions and materials that explored the issues in these matters.

[75] The City adopted the official plan and zoning by-law amendments, the Region approved the official plan amendments and the City of Markham Committee of Adjustment granted provisional consent subject to conditions.

[76] The evidence before the Board has been thorough and complete in its review of the matters before the Board. Having considered the evidence from the Proponents, the City and the Appellants, the Board finds that the official plan amendments, the zoning by-law amendments and the applications for consent to convey, subject to conditions set out by the Committee of Adjustment, are reasonable, appropriate, represent the principles of good community planning and are in the public interest.

ORDER

[77] The Board orders that the appeals of James Jagtoo and Stephen Emmanuel are dismissed.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE CHAIR