

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: May 25, 2023

CASE NO(S): OLT-21-001826

PROCEEDING COMMENCED UNDER section 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant:	Jonathan and Kathy Fast
Subject:	Consent - refused by Approval Authority
Description:	To create two new lots for residential development
Reference Number:	B-14/21
Property Address:	9 Dee Road
Municipality/UT:	Niagara-on-the-Lake/Niagara
OLT Case No.:	OLT-21-001826
OLT Lead Case No.:	OLT-21-001826
OLT Case Name:	Fast v. Niagara-on-the-Lake (Town)

PROCEEDING COMMENCED UNDER section 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant:	Jonathan and Kathy Fast
Subject:	Consent - refused by Approval Authority
Description:	To create two new lots for residential development
Reference Number:	B-15/21
Property Address:	9 Dee Road
Municipality/UT:	Niagara-on-the-Lake/Niagara
OLT Case No.:	OLT-21-001827
OLT Lead Case No.:	OLT-21-001826

Heard: March 27-31, 2023 by video hearing

APPEARANCES:**Parties****Counsel**

Town of Niagara-on-the-Lake

A. Zuidema

Anthony Vani

T. Hanrahan and A. Mannell

**MEMORANDUM OF DECISION BY C.I. MOLINARI AND ERIC S. CROWE AND
ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Tribunal was an appeal made by Jonathan and Kathy Fast under s. 53(19) of the *Planning Act* (“Act”), now advanced by the conditional purchaser, Anthony Vani, for the refusal of two applications for consent (“Applications”) by the Town of Niagara-on-the-Lake (“Town”) Committee of Adjustment (“CofA”) to create two new lots on the property municipally known as 9 Dee Road (“Subject Property”).

[2] The Subject Property is located within the urban area of the Village of Queenston (“Village” or “Queenston”) on the south side of Dee Road and is improved with a single detached dwelling located at the east end of the property with the remainder of the property lying vacant. The proposed severances would meet the Town of Niagara-on-the-Lake Zoning By-law 4316-19 (“ZBL”) frontage and area requirements, thus not requiring any related minor variance applications.

[3] The Town Staff Report (“Staff Report”) recommended approval of the Applications, subject to several conditions (“Conditions”). No Town Departments or commenting agencies had any objections to the Applications, although there was opposition from surrounding property owners and a Town Councillor citing concerns related to drainage, grading, traffic, access, road conditions, archaeology, heritage landscape, character of the neighbourhood and an Ontario Municipal Board (“OMB”) decision from 2000.

BACKGROUND AND HISTORY

[4] In 1999, consent applications (and a related minor variance application) were submitted to the Town to create three new lots from the original landholding which included 3 Dee Road located west of the Subject Property. Town Staff supported the applications, but they were refused by the CofA. The applications were appealed to the former Ontario Municipal Board (“OMB”). In 2000, the OMB determined that three new lots would result in overdevelopment of the site, would be out of character with the surrounding neighbourhood and would not be a reasonable form of residential intensification, but found that one new lot would be appropriate. As a result, the OMB approved the creation of one new lot (and a related minor variance), which resulted in the creation of the Subject Property.

[5] Since the creation of the Subject Property in 2000, the guiding land use planning framework in Ontario has evolved to directing growth to settlement areas and prioritizing intensification, among other initiatives, including conserving and promoting cultural heritage resources.

[6] In 2012, a further consent application (and a related minor variance application) was submitted to the Town to create one new lot from the Subject Property. Town Staff supported the applications and the CofA granted approval of the consent application, subject to conditions. Although no appeals were filed, the owner did not satisfy the conditions of consent within the prescribed time period and the consent application lapsed and was deemed refused (and the related minor variance application was considered void).

[7] Since 2000, Dee Road has been upgraded by being widened and paved, the installation of an irrigation pipe and the construction of a storm sewer. Additionally, the entrance to Dee Road from the Niagara Parkway to the west was reconstructed sometime between 2015 and 2018.

[8] During the CMC held on October 3, 2022, by request of counsel for the Applicant/Appellant, the appeals were transferred from Mr. and Mrs. Fast to Mr. Vani, due to a conditional purchase of sale agreement between Mr. and Mrs. Fast and Mr. Vani for the severed parcels.

[9] The Parties have consented to a revision to the Issues List (“IL”) that was attached to the Procedural Order issued on November 23, 2022, resulting in the removal of Issues 4, 5, 6 and 8.

LEGISLATIVE FRAMEWORK

[10] When considering an appeal pursuant to s. 53(19) of the Act, the Tribunal must be satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality, as required by s. 53(1) of the Act.

[11] Should the Tribunal be satisfied that a plan of subdivision is not necessary, s. 53(12) of the Act states that the Tribunal, in determining whether provisional consent is to be given, shall have regard to the matters under s. 51(24) of the Act.

[12] Further, the Tribunal shall have regard to matters of provincial interest as set out in s. 2 of the Act and to the decision of the Town and the information it considered in making its decision as set out in s. 2.1(1) of the Act.

[13] The Tribunal must also be satisfied that the Applications are consistent with the Provincial Policy Statement, 2020 (“PPS”) and conform with the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) and the Niagara Escarpment Plan, 2017 (“NEP”) pursuant to s. 3(5) of the Act, as well as conform with the Region of Niagara Official Plan, 2014 (“ROP”) and the Town Official Plan, 1998 (“TOP”), and comply with the ZBL.

[14] In consideration of the above statutory requirements, the Tribunal must be satisfied that the Applications represent good planning and are in the public interest.

WITNESSES

Applicant/Appellant

[15] In support of the proposal and as witnesses for the Applicant, Emily Elliott was qualified to provide land use planning opinion evidence. Mark Iamarino, Senior Planner for the Town and author of the Town's Staff Report ("Staff Report"), appeared under summons and was also qualified to provide land use planning opinion evidence.

[16] In addition, Dan Currie was qualified to provide cultural heritage planning and policy opinion evidence, Stew Elkins was qualified to provide transportation planning opinion evidence and Jason Schooley was qualified to provide civil engineering and stormwater management opinion evidence.

Town of Niagara-on-the-Lake

[17] In opposition to the proposal and as witnesses for the Town, Alvaro Almuina was qualified to provide transportation engineering, transportation planning, public safety and road design opinion evidence and Mark Dorfman was qualified to provide land use planning opinion evidence.

PLANNING EVIDENCE

The Applicant/Appellant's Planning Evidence – Emily Elliott

[18] Ms. Elliott provided the Tribunal with factual background evidence related to the site, the surrounding community, the history of the various previous applications related to the Subject Property, the Applications and Conditions and an additional condition

required by the Town's Operations Department related to the submission of an overall lot grading plan.

Planning Act

[19] Ms. Elliott opined that the Applications do not trigger a need for a plan of subdivision since no new roads or parkland are required for the development of the Subject Property and the consent process and Conditions ensure the proper and orderly development of the Town.

[20] In her witness statement, Ms. Elliott opined that the Applications have regard to the various matters in considering a draft plan of subdivision under s. 51(24) of the Act as follows:

- the Applications have regard for matters of provincial interest as set out in s. 2 of the Act in that: mitigation measures have been proposed to address issues related to adjacent heritage resources; the proposed lots can be adequately serviced with municipal water and sanitary services and storm sewers; the Applications will allow for the appropriate division of land and facilitate infill residential development on lands designated and zoned for residential use; and the adequacy of the road is addressed through the Conditions.
- the Applications are not premature as the Subject Property is located within the Built-Up Area of the Town and can be serviced by municipal services;
- the Applications are considered to be in the public interest as they are an appropriate form of infilling and there will be no impact on natural heritage features;
- the Applications conform to the ROP, the TOP and the Secondary Plan;

- the use, dimensions and shapes of the proposed lots are suitable as the Subject Property is designated and zoned for the proposed residential use, no minor variances are required and the Slope Stability Assessment (“Slope Study”) prepared for the Applications demonstrates the slope is stable and the Conditions ensure the recommendations of the Slope Study are implemented;
- the Conditions reflect appropriate requirements prior to final approval;
- no identified natural heritage resources will be impacted by the development of the proposed lots and an Arborist Report identified trees for retention;
- the utilities and municipal services are adequate and the Conditions require a servicing agreement to be entered into; and
- the Conditions require cash-in-lieu of parkland dedication.

PPS

[21] In consideration of the PPS, Ms. Elliott opined that the proposed lots would contribute to an efficient land use pattern, an efficient use of municipal services and a range of housing in the community, would not result in environmental or public health and safety concerns and would contribute to intensification within a settlement area to help sustain healthy, liveable and safe communities as envisioned by section 1.1.1 of the PPS.

[22] Addressing section 1.1.3 of the PPS, Ms. Elliott proffered that the Subject Property is located within a settlement area as required by section 1.1.3.1, and that the proposed development would result in the efficient use of land and resources through intensification of the underutilized property within a built-up area which can be serviced by municipal services.

[23] With respect to section 1.5 of the PPS, Ms. Elliott proffered that no new public streets or public spaces will be created or are required for the proposed development and that the Subject Property is located within an existing community which includes a range of uses including parks, trails and a library.

[24] Ms. Elliott opined that the Applications are consistent with section 1.6.6.2 of the PPS which states that municipal services are the preferred form of servicing for settlement areas as municipal water and sanitary services and storm sewers are available to service the proposed lots.

[25] Regarding cultural heritage and archaeology covered in section 2.6 of the PPS, Ms. Elliott relied on the Stage 4 Archaeological Assessment ("Archaeology Assessment") undertaken for the Applications, which is awaiting clearance by the Ministry of Tourism, Culture and Sport ("MTCS"), and the Cultural Heritage Impact Assessment ("CHIA") undertaken for the Applications and the witness statement of Mr. Currie which concludes that the Applications are consistent with the cultural heritage policies of the PPS.

[26] Ms. Elliott concluded that the Applications are consistent with the PPS as the Subject Property is located within the built-up area of settlement area, will result in the intensification of an underutilized site intended for residential use which can be serviced by municipal services and will contribute to the supply of housing within the community. Furthermore, matters related to provision of services, cultural heritage and archaeology have been addressed and the recommended Conditions are appropriate.

Growth Plan

[27] Ms. Elliott opined that the Applications address the guiding principles of section 1.2.1 of the Growth Plan as it will contribute to the achievement of complete communities through increasing the supply and range of housing within an established neighbourhood and represents intensification of an underutilized site within the Urban

Boundary that is municipally serviced. The proposed development will not impact natural heritage, hydraulic and landform systems features and functions and will not have a significant impact cultural heritage resources.

[28] Ms. Elliott opined that the Applications meet policy 2.2.1.2 of the Growth Plan directing growth to settlement areas, as the Subject Property is located within the delineated built-up area of a settlement area with existing public service facilities on lands which can be serviced through municipal services.

[29] Ms. Elliott further opined that the Applications meet policy 2.2.6.1 of the Growth Plan which provides direction to municipalities with regard to housing. The policy requires that municipalities support housing choice through the achievement of minimum intensification and density targets. She proffered that the ROP and TOP have policies related to minimum intensification and housing in their official plans and that the Applications will assist in achieving the minimum intensification targets.

[30] Ms. Elliott concluded that the Applications are consistent with the Growth Plan as the Subject Property is located within a built-up area on lands which can be adequately serviced, the Applications support the intensification target for the Built-up Area and the achievement of complete communities through additional housing in the existing Queenston community.

NEP

[31] Ms. Elliott advised the Tribunal that the Subject Property is within the NEP Area within the Queenston Minor Urban Centre and with an underlying designation of Escarpment Rural Area.

[32] Ms. Elliott reviewed policy 1.6.5 of the NEP which provides that:

the range of permitted uses and the creation of new *lots* in a Minor Urban Centre will be those in an approved *official plan* and/or *secondary plan*

not in conflict with the Niagara Escarpment Plan, subject to the Development and Growth Objectives of this designation.

She proffered that the proposed lots are permitted by the TOP and the Secondary Plan.

[33] Ms. Elliott opined that the Applications meet the development and growth objectives of the NEP which direct development and growth to Escarpment Rural Areas and within Minor Urban Centres. She opined that the Applications further meet the development and growth objectives as the proposed development is considered to be modest infill within the existing community which will not impact the scenic resources of the escarpment or result in any visual impact of the escarpment, nor will it impact natural heritage features or functions, hydrologic features and functions, agricultural areas, water resources, or cultural heritage resources.

[34] Ms. Elliott concluded that the Applications are consistent with the NEP and advised the Tribunal that the Niagara Escarpment Commission ("NEC") provided comments on the Applications indicating that the Subject Property is not subject to NEC Development Control and that NEC staff confirmed they had no objection to the Applications.

ROP

[35] Ms. Elliott advised the Tribunal that the ROP was the applicable Official Plan in force at the time the Applications were submitted in 2021, the Staff Report was written and the CofA issued its decision, and, notwithstanding the 2022 Regional Official Plan is now in force, the ROP is the applicable regional policy document for consideration of the Applications.

[36] Ms. Elliott proffered that the Subject Property is within the Urban Area Boundary and designated Built-Up Area in the ROP.

[37] Ms. Elliott stated that the Applications support the growth management objectives of the ROP which directs the majority of growth to the existing urban areas with a significant portion of the growth to be provided through intensification. She proffered that the Applications contribute to the overall objective of intensification, contribute to the range of housing types in the community and promote the efficient use of existing municipal services.

[38] Ms. Elliott concluded that the Applications conform to policies of the ROP and advised the Tribunal that the Region provided comments on the Applications indicating that Regional planning staff had no objections to the Applications and confirming that they conform with the ROP. She also opined that, despite the ROP being the applicable regional policy document for consideration of the Applications, the Applications also conform with the 2022 Regional Official Plan.

TOP

[39] Ms. Elliott stated that the Subject Property is designated Established Residential in the TOP, which permits low density residential uses including single detached dwellings, and is located within the Secondary Plan boundary.

[40] Ms. Elliott reviewed the growth management policies of the TOP and opined that the Applications assist in achieving the growth strategy objectives as the proposed development can be serviced by municipal infrastructure and will result in lot creation within the urban boundary, contribute to achieving the Town's minimum intensification target, satisfy the 'Residential' objectives of the Official Plan and contribute to the range of housing options and lot sizes in the community.

[41] Ms. Elliott stated that the Applications support the intensification policies of the TOP and, in particular, the housing mix policies, as they represent infill development that is compatible with the surrounding community and that will not negatively impact

heritage resources. She continued that the Applications would facilitate intensification in the built-up area and contribute to the achievement of the intensification targets.

[42] Ms. Elliott addressed the intensification related land use compatibility policies of the TOP and opined that the proposed single detached dwellings would be consistent with the existing surrounding neighbourhood, would not impact natural heritage areas, and would demonstrate compatibility and integration with the surrounding land uses as a condition of approval requires that a development agreement be entered into requiring a review of the building plans by the Town's Urban Design Committee and Municipal Heritage Committee.

[43] The TOP requires that applications for consent are to be accompanied by a detailed site and area analysis demonstrating that there will be minimal impact on surrounding residential uses, streetscapes and the character of the area. Ms. Elliott stated that a Streetscape Study was submitted in support of the Applications and was reviewed by Town Staff and commenting agencies, and no concerns were raised in this regard.

[44] Ms. Elliott addressed the residential density policies of the TOP and concluded that the Applications conform to the policies. The policies state that, generally, low density residential development will not exceed 6 units per acre residential net density. Ms. Elliott advised that the proposed density for the Subject Property is 4.62 units per acre thereby not exceeding the maximum permitted density.

[45] With respect to the heritage and archaeological policies of the TOP, Ms. Elliott relied on the findings of Mr. Currie, that the Applications conform to the cultural heritage policies of the TOP, and the Archaeological Assessment.

[46] With respect to the transportation policies of the TOP, Ms. Elliott advised that the Subject Property fronts onto Dee Road which is classified as a local road in the TOP and is intended to provide access to individual properties with the right-of-way width to

be sufficient to accommodate the intended traffic volumes as well as on-street parking. Ms. Elliott advised the Tribunal that Dee Road currently provides access to four single detached dwellings as well as the Willowbank School of Restoration Arts (“Willowbank”) and that two additional driveways will be required to provide access to the proposed lots. Ms. Elliott stated that a recommended condition of the Applications requires municipal entrance permits be obtained from the Town.

[47] Ms. Elliott advised the Tribunal that she relied on the finding of the Witness Statement of Mr. Ekins, which confirms that the design of Dee Road can accommodate the expected traffic.

[48] With respect to the infrastructure policies of the TOP, Ms. Elliott advised that, within the urban boundary, development is required to connect to municipal sanitary services. Ms. Elliott stated that the proposed lots can be serviced by municipal water and sanitary services and that the Conditions include a requirement for a servicing agreement to be entered into with the Town related to the installation of a watermain on Dee Road and that the owner provides connections for water and sanitary sewer services for each proposed lot to the satisfaction of the Town.

[49] With respect to the consent policies of the TOP, Ms. Elliott advised that the Applications conform to the relevant policies as follows:

- a. The Applications do not result in the encroachment of urban development on prime agricultural lands.
- b. A Slope Stability Assessment and a grading plan were provided in support of the Applications demonstrating that the slope is stable. Conditions of approval are recommended related to implementation of the recommendations of the Slope Stability Assessment and approval of a grading plan.
- c. The Subject Lands can be serviced by municipal water and sanitary services. Conditions of approval are recommended which require a Servicing Agreement for the extension of the watermain and the provision of separate water and sanitary services to each lot.
- d. The proposed lots have frontage on a public road that is maintained year round. No road improvements are needed to accommodate the

proposed lots. A condition of approval has been included requiring that entrance permits be obtained for the driveways to the proposed lots.

- e. The Applications have the effect of infilling in an existing urbanized area and not extending the urban area.
- f. The size of the proposed parcels are considered to be appropriate for single detached dwellings as the lot area and frontage proposed for all three lots satisfy the requirements of the Queenston Secondary Plan and the zoning by-law. Further, the retained lands include an interior side yard setback for the existing lot that exceeds the minimum requirements.
- g. At present, the Subject Lands greatly exceed the minimum lot area and lot frontage requirements of the zoning by-law. The Application results in the creation of two new lots on the Subject Lands such that none of the lots greatly exceed the minimum requirements of the zoning by-law.
- h. Based on the evidence of Stew Elkins, traffic hazards will not be created.
- i. The number of lots being created will not have a significant impact on the surrounding neighbourhood.
- j. The lot sizes of the proposed lots and the retained lands are within the range of lot sizes that are present in the surrounding community.
- k. No minor variances are required to facilitate the lot creation.
- l. The Applications conform to the Niagara Escarpment Plan. Niagara Escarpment Commission staff did not object to the Applications.

[50] In conclusion, Ms. Elliott opined that the Applications conform with the TOP.

Secondary Plan

[51] Ms. Elliott advised the Tribunal that the Secondary Plan was adopted as an Official Plan Amendment to the TOP and received approval by the former Ontario Municipal Board on November 21, 2011. She stated that the purpose of the Secondary Plan is to include a more detailed and strategic direction for growth in Queenston and that the Subject Property is located within the Urban Area Boundary of the Secondary Plan and designated Established Residential.

[52] Ms. Elliott stated that a key element of the Village structure is, as stated in the Secondary Plan, that:

[r]esidential uses are the predominant land use in the Village. The low scale and diversity of built form and numerous architectural styles together with heritage resources found within Village residential neighbourhoods contribute significantly to the character and visual interest of the Village. New residential infill development should complement the built form and landscape character of the neighbourhoods.

With respect to this key element, Ms. Elliott stated that the Subject Property is presently used for residential purposes and that the Applications will have no impact on the residential use of the Subject Property or the residential character of the Village.

[53] Ms. Elliott drew the Tribunal's attention to the section of the Secondary Plan that states the nine strategic directions to guide change within the Village. The second direction being to strengthen existing neighbourhoods to:

appropriately fill in the gaps, ensuring new development respects and enhances overall neighbourhood character. Provide modest opportunities for more diverse forms of housing enabling seniors to remain in the community and young families and professionals to come to the Village.

Ms. Elliott stated that, in order to achieve this, the Secondary Plan includes minimum lot sizes, maximum permitted building footprints, building setbacks and urban design criteria to guide appropriate contextual integration of residential infill.

[54] It was Ms. Elliott's opinion that the Applications represent an opportunity for modest infill through making efficient use of an existing lot that greatly exceeds the minimum requirements of the Secondary Plan.

[55] Ms. Elliott reviewed the Secondary Plan development principles that are to be considered in the review of all development applications. The second development principle is to strengthen existing neighbourhoods and Ms. Elliott opined that the Applications address this principle as the proposed new lots respect the range of lot frontages and areas in the neighbourhood and the Village as a whole, and the Subject

Property is presently underutilized and is located in an area that is served by existing community amenities such as public parks, a library, recreational facilities and emergency services.

[56] Further development principles include creating a more complete and diverse community by modestly increasing the range of residential uses and preserving natural and cultural heritage. Ms. Elliott stated that the Applications represent an opportunity for a modest increase to housing within the community, thereby meeting the former principle. She also stated that the Subject Property is not designated under Part IV or V of the Ontario Heritage Act (“OHA”) but is adjacent to designated cultural heritage resources (Willowbank and the Hamilton-Kormos House (“H-K House”)). Ms. Elliott proffered that the CHIA includes mitigation recommendations in order to ensure there will be no adverse impact on cultural heritage features and that there are no natural heritage features on the Subject Property, thereby meeting the latter principle.

[57] With respect to all residential designations, Ms. Elliott advised that the Secondary Plan provides more detailed policies with regard to height, built form and design guidelines to provide clear policy direction that is appropriate for the Village, but that only modest residential infill development is expected to occur within the Village. In this respect, Ms. Elliott proffered that the policies related to residential designations require a Streetscape Study, new buildings to generally reflect and complement existing adjacent development (in terms of scale, height, building location and architectural character), and detailed specifications on building locations, setbacks and garage locations. Ms. Elliott stated that a condition of approval for both Applications includes the registration of a Development Agreement that requires Urban Design Committee review prior to issuance of a building permit for any new dwelling, and that the location of the dwellings will satisfy the requirements of the ZBL with regard to the setbacks and garage placement.

[58] With respect to the Established Residential designation, Ms. Elliott stated that the Secondary Plan provides that:

- permitted 'main uses' are residential uses including single detached dwellings, semi-detached dwellings and duplexes,
- the density of development shall not exceed 9 units per acre,
- newly created single detached lots shall have minimum dimensions of 18m in width and 36 metres in depth and should be similar in overall size, width and depth to adjacent and neighbouring residential lots, and
- building footprints of the combined principle and secondary structures shall be no greater than 33% of the lot area.

[59] Ms. Elliott noted that the proposed lots satisfy the policies of the Established Residential designation, as the lots are proposed to be developed with single detached dwellings on lots that exceed the minimum width and depth required and are of a similar size to lots in the surrounding neighbourhood which include a range of lot sizes and frontages. Ms. Elliott noted that the Secondary Plan establishes a higher density of 9 units per acre than the maximum density set out in Official Plan but that regardless, the Applications do not exceed the maximum density of either the Official Plan or the Secondary Plan.

[60] With respect to the infrastructure policies of the Secondary Plan, Dee Road is classified as an Unimproved Road and that it should remain unpaved. Ms. Elliott confirmed that despite this, Dee Road has been widened and paved and the entrance to Dee Road from the Niagara River Parkway was reconstructed. Ms. Elliott stated that no improvements to Dee Road are proposed as a result of the Applications and that the Town Operations and Fire Departments had no issues with the Applications. She further stated that, with respect to drainage, the Slope Study included recommendations for grading and drainage and that the Niagara Peninsula Conservation Authority ("NPCA") and the Town Building Department had no objections to the Applications and

that the proposed Conditions to the Applications require detailed design drawings and proposed lot grading plans be reviewed and approved prior to building permits being issued.

[61] With respect to the urban design policies of the Secondary Plan, Ms. Elliott reviewed the policies in detail and stated that the development of the proposed lots would be consistent with the ZBL and would be addressed through the Urban Design Committee review as required by the proposed Conditions.

[62] Ms. Elliott stated that the Secondary Plan identifies Queenston as a cultural heritage landscape and provides various tools for conserving the landscape. She stated that the analysis related to the cultural heritage landscape policies of the Secondary Plan is contained in Mr. Currie's witness statement.

[63] Ms. Elliott concludes that the Applications conform with the Secondary Plan, will result in the creation of two new lots for single detached dwellings which are a permitted use in the Established Residential designation and represent an opportunity for modest infill within the Village which is anticipated by the Secondary Plan.

ZBL

[64] Ms. Elliott stated that the Subject Property is zoned Established Residential ("ER1") which permits single detached dwellings. She further stated that the proposed lots and the retained lot satisfy the minimum requirements of the ER1 zone and are of sufficient size to permit the construction of a single detached dwelling on each lot while satisfying the minimum requirements of the ER1 zone with regard to building setbacks, but that confirmation of compliance with applicable zoning regulations would occur through the building permit stage.

Overall Opinion

[65] Regarding the Issues identified on the revised IL, Ms. Elliott provided her opinion that:

- the recommended Conditions are reasonable and relevant, including those requiring a development agreement, a servicing agreement and the cash-in-lieu of parkland dedication,
- based on the witness statement of Mr. Currie, the proposed lots are sensitive to the community context and compatible with the community, are compatible with the existing and planned character of the community and the cultural heritage character of the community, and
- there is a policy balance between the provincial and municipal interests.

[66] Ms. Elliott concluded that it is her professional opinion that the Applications represent good planning as they:

- are consistent with the PPS,
- conform with the Growth Plan, the ROP, the TOP and the Secondary Plan,
- satisfy the requirements of the ZBL,
- will result in the creation of two new lots for single detached dwellings which results in the efficient use of lands, within the Urban Area that can be serviced by municipal infrastructure,

- will result in a total of three lots which have lot areas and frontages comparable with the existing lotting fabric in the community, representing an opportunity for gentle intensification within the community, and
- are subject to appropriate Conditions of approval.

The Applicant/Appellant's Planning Evidence – Mark Iamarino

[67] During his testimony, Mr. Iamarino proffered that he had reviewed all the applicable policy documents and opined that the Applications have regard to s. 3(5) of the Act in that they are consistent with the PPS and conform to the Growth Plan, the NEP, and the ROP, and that they have regard for the criteria in s. 51(24) of the Act, including the matters of provincial interest included in s.2 of the Act.

[68] Mr. Iamarino opined that the Applications would contribute to meeting the intensification target of 50% in the Town and the density requirement in the Secondary Plan, represent an opportunity for infill of an underutilized lot which is encouraged in the Secondary Plan, contribute to a more compact built form and help to increase the housing supply.

[69] Mr. Iamarino advised the Tribunal that the Subject Property can be serviced by municipal water, sanitary and storm sewers, and the proposed lots would be compatible with the surrounding land uses, are similar to other lots in the neighbourhood and meet the frontage and depth requirements.

[70] Mr. Iamarino proffered that the Conditions, including the additional condition imposed at the CofA meeting requiring an over lot grading plan, are reasonable and appropriate. He stressed that the Conditions include the review by the Urban Design Committee and the Municipal Heritage Committee prior to the issuance of a building permit.

Overall Opinion

[71] Finally, Mr. Iamarino opined that the Applications meet the Planning Act requirements for lot creation, are consistent with the PPS and conform with the Growth Plan, COP, TOP and Secondary Plan.

The Town's Planning Evidence – Mark Dorfman

[72] Mr. Dorfman provided the Tribunal with an opposing view of the Applications and opined that the Applications do not meet the relevant sections of the Act, the relevant policies of the PPS, the Growth Plan, the NEP, the ROP, the TOP or the Secondary Plan. Mr. Dorfman also provided his opinion on the Issues on the revised IL.

[73] Mr. Dorfman premised his evidence by stating that he had met with the area residents opposed to the Applications to help understand their concerns as it is their community. He stated that he was not an advocate for the residents and merely listened to their concerns as he did not want to speculate on their issues.

[74] Mr. Dorfman characterized the Applications as not typical in that the condition of Dee Road, compared to other streets in the neighbourhood, is unique in its construction, steepness and extent of development. He undertook an extensive review of the characteristics of the community, the history of the evolution of Dee Road, the history of the lotting pattern, the topography, grading and drainage of the Subject Property and surrounding properties and the conditions of Dee Road today, that together informed his understanding of the site context for the consideration of the Applications.

Planning Act

[75] Mr. Dorfman went through the IL, addressing each issue in turn. With respect to Issue 1, related to the matters of provincial interest set out in s. 2 of the Act, Mr. Dorfman concluded that the CofA did not have regard to s. 2 and opined that the lots do

not fit in with the cultural features in Queenston, including Willowbank and the H-K House, that Dee Road is not efficient and does not meet municipal standards, that the lots are not in a safe or appropriate location and that the planning conflict between private and public interests is not resolved.

[76] With respect to s. 51(24) of the Act, Mr. Dorfman opined that the Applications do not meet criteria a), b), c), d), e), f), g) and m) in that there is an effect on matters of provincial interest, the Applications are premature, not in the public interest and do not conform to the TOP, the Subject Property and Dee Road are not suitable for the proposed development, the dimensions and shapes of the proposed lots do not allow for safe access, there may be restrictions on the proposed lots with respect to surface drainage and access to Dee Road, and there is no regard to the impact of site plan control since there are no concept plans.

PPS

[77] With respect to Issue 2, related to the relevant policies of the PPS, Mr. Dorfman opined that the introduction of two residential dwellings on Dee Road is not consistent with the provincial interest of enhancing a safe street for pedestrians and vehicles and facilitating safe active transportation. He proffered that this is due to the fact that “Dee Road is recognized by the Town and the community as the “Laura Secord Trail (1813)” and “is functionally part of the Willowbank Cultural Heritage Landscape since it is part of the downslope of the Ridge”. He admitted that there is no statement to that effect in the CHIA but that this comes from his observations. It was his opinion that, on balance, development on the Subject Property is not consistent with the PPS.

Growth Plan

[78] With respect to Issue 3, regarding conformity with the Growth Plan, Mr. Dorfman stated that the guiding principles are broadly stated, and, although he agreed that development is encouraged in the delineated built-up area, he opined that, since the

area is not a designated strategic growth area by the Town, additional housing development in this location should not be a priority.

[79] Mr. Dorfman further opined that the Growth Plan should not take precedence over the TOP and Secondary Plan regarding the conservation of the Queenston community and the ‘impacts of safety’. It was his opinion that the Applications do not achieve the goals, objectives and policies of the TOP and does not conform with the Growth Plan.

TOP / Secondary Plan

[80] With respect to Issue 7, regarding conformity with the TOP, Mr. Dorfman drew attention to the Secondary Plan policies for Queenston, which are integrated in the TOP, wherein it is stated that “[o]nly modest residential infill development is expected to occur within the Village” and continues that “it is important that all new development positively contributes to the character and quality of the Village and allows for the continuation of the variety and diversity of styles found in the Village”. He further quoted a policy pertaining to all residential designations within the Secondary Plan that states “[n]ew buildings shall generally reflect and complement existing adjacent development in terms of scale, height, building location and architectural character”. He opined that the existing dwelling at 9 Dee Road, being a two-storey dwelling, is not in character with the existing dwellings in the neighbourhood on the basis that they are one-storey dwellings, and that the dwelling at 9 Dee Road should be treated as an anomaly.

[81] Mr. Dorfman opined that, although the Established Residential designation applies to the Subject Property, the wording in the preamble to the Established Residential policies in section 4.3 of the Secondary Plan suggests that the designation corresponds to the ‘traditional urban street and block pattern’ south of Dee Road and that Dee Road is not within a traditional urban street and block pattern but is completely separate.

[82] With respect to the policy 4.3.3 in the Secondary Plan, Mr. Dorfman suggested that the maximum density of 30 units per hectare ("ha") is the total density for all lands designated Established Residential and "not devoted to one particular lot".

[83] Mr. Dorfman characterized the lotting pattern on Dee Road as different from the lotting pattern on the several roads south of the Subject Property, on Highlander Street, Dumfries Street, Partition Street and Kent Street, wherein Dee Road has residential lots only on one side of the street compared to the more regular lotting pattern on both sides of the street for the other streets, making a conclusion that it should be considered separately from the remainder of the Queenston community.

[84] Mr. Dorfman proffered a sketch of an outline of a portion of the neighbourhood which included the block bounded by Niagara River Parkway, Dee Road, Queenston Street, and the back property lines of the properties on the north side of Highlander Street, excluding a lot on Niagara River Parkway, being a lot similar in size to the lots on Highlander Street. Mr. Dorfman stated that this is the 'neighbourhood' that he considers is in relation to 9 Dee Road. He clarified that the Queenston community is all lands included in the Secondary Plan but that, in his opinion, the 'neighbourhood' in relation to 9 Dee Road is as delineated by his sketch. He added that the other roads to the south are typical of the Village streets but that the characteristic of Dee Road is different and should be considered in the context of his defined 'neighbourhood'.

[85] Mr. Dorfman proffered that he narrowed the scope of the Queenston community to his defined 'neighbourhood' in order to determine its characteristics and the implications of adding two lots in relation to policy 4.3.3. For the 'neighbourhood', the total area is 3.29 ha, the average lot area is 0.253 ha, and the net residential density is 3.9 units per ha. By allowing the lots to be severed, Mr. Dorfman calculated the average lot area would decrease to 0.219 ha and the average net residential density increases to 4.6 units per ha. He then calculated the density of the two severed lots on their own to be 13.3 units per ha, which he opined is relatively high compared to the density of the existing dwelling on the lot, being 8.8 units per ha, and the density of the

two severed lots and the retained lot to be 11.4 units per ha. He concluded that this exceeds the density characteristics of the 'neighbourhood' and fails to conform to the intent of the TOP policies, and the two proposed severed lots are not in keeping with the proposed retained lot and the other existing lots in the area, nor do they conform with the 'neighbourhood' pattern. With respect to Willowbank, Mr. Dorfman suggested that it is part of the neighbourhood in terms of the cultural heritage landscape and visually, but not in terms of his lotting pattern analysis.

[86] Mr. Dorfman conceded that, in his opinion, one severance on the Subject Property would be more appropriate than the two proposed lots, which he described as 'orphans', and would bring the area closer into conformity with his defined 'neighbourhood' in terms of lot area. He concluded that the proposed lots do not conform to the 'neighbourhood' pattern.

[87] Mr. Dorfman found that although Figure 5 to the Secondary Plan shows Dee Road as an unimproved road, the pedestrian/bike trail to the northeast now continues along Dee Road, since the Laura Secord Legacy Trail is now identified along Dee Road. In this respect, he opined that it should continue to function as a recognized pedestrian/bike trail rather than be improved to urban standards and that the development of two additional lots fronting on Dee Road is not good planning.

[88] Mr. Dorfman drew attention to Schedule I-4 in the TOP which shows that there are no intensification areas within Queenston and that the Secondary Plan does not plan for intensification but does plan for infill. He agrees that the development of the two proposed lots would be considered infill but that they are not compatible with, and would not satisfy, the objectives of the Secondary Plan in terms of its relationship to the neighbourhood or the cultural heritage landscape, which includes Willowbank.

[89] With respect to policy 9.3.3.(4) in the TOP, related to the construction of structures, in terms of scale, character, height, design and mass, Mr. Dorfman considers the style and form of the existing dwelling on 9 Dee Road to be an anomaly

and 'should not be repeated' nor set a precedent for the construction of dwellings on the proposed lots.

[90] With respect to policy 9.4 (4) in the TOP, related to residential density and limiting net density of 14 units per ha for low density residential developments, Mr. Dorfman opined that he would not encourage that level of density on Dee Road as it is different from other streets in the Village which have a 'completely different character' and where he would expect higher density infill because they would be compatible, even if existing dwellings were redeveloped with higher density developments. He concluded that that type of character and density does not and should not exist on Dee Road.

[91] In trying to understand the characterization of the area, Mr. Dorfman considers Dee Road to be integral to Willowbank, as it was part of the heritage easement and part of the cultural heritage landscape and therefore is part of the "foundation for considering the scale and massing of any proposed development in Queenston as supported by the Official Plan and the Secondary Plan". In his opinion therefore, and for all the points he raised related to the TOP and the Secondary Plan, Mr. Dorfman concluded that the Applications do not conform to the TOP.

ZBL

[92] Mr. Dorfman stated that the Applications must, in his opinion, meet the provisions of the ZBL without the need for any minor variances and acknowledged that the Applications do meet the minimum lot frontage and area requirements of the ZBL.

Overall Opinion

[93] Mr. Dorfman concluded that the proposed development is not compatible with, and would change the character in, the Queenston community, as the proposed development of the Subject Property at a higher density than what exists in his defined

‘neighbourhood’ would set a new and different standard. He opined that the proposed development does not “completely maintain the intent of the provincial interest and it is not in the interest of the municipality” and that “the provincial interest should not outweigh the municipal interest”.

[94] Mr. Dorfman stated that it is his professional opinion that the Applications do not represent good planning and are not in the public interest.

CULTURAL HERITAGE EVIDENCE

The Applicant/Appellant’s Cultural Heritage Evidence – Dan Currie

[95] Mr. Currie provided uncontested evidence related to cultural heritage with respect to the Subject Property and the surrounding community. He confirmed that the Subject Property does not contain any cultural heritage resources or landscapes, is not listed on the Town’s Municipal Register of Properties of Cultural Heritage Value or Interest (“Register”) nor is it designated under Part IV or V of the OHA.

[96] Mr. Currie advised the Tribunal that the Subject Property is adjacent to three protected heritage resources including Willowbank, the H-K House and Dee Road. Willowbank and the H-K House are designated under Part IV of the OHA while Dee Road is listed on the Register but not designated. The heritage resource attributes related to Dee Road include the road itself, the trees lining the road and the proximity to Willowbank and the H-K House.

Planning Act

[97] Mr. Currie then went through the IL addressing each issue applicable to cultural heritage matters. With respect to Issue 1, related to the matters of provincial interest set out in s. 2 of the Act, Mr. Currie opined that the Applications have regard for s. 2(d)

related to the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest as:

- there are no identified built heritage resources on the Subject Property
- he agrees with the CHIA conclusion that there will be no direct impacts to adjacent built heritage resources which cannot be mitigated
- the proposed development conforms to the cultural heritage policies of the NEP and will not impact cultural heritage resources within the NEP area, and
- the Applications will not impact the cultural heritage landscape of the Village.

PPS and Growth Plan

[98] With respect to Issues 2 and 3 on the revised IL, Mr. Currie opined that the Applications are consistent with the cultural heritage policies of both the PPS and the Growth Plan for the same reasons as listed in paragraph 97 above.

NEP

[99] With respect to Issue 4, Mr. Currie stated that the Subject Property is within the NEP area which contains cultural heritage landscapes and is subject to plans that govern cultural heritage resources and development within the plan area. For this reason, it was Mr. Currie's opinion that the Applications conform to the NEP cultural heritage policies.

ROP

[100] With respect to Issue 5, Mr. Currie advised the Tribunal that, although not listed in Issue 5, in his opinion, section 10.C of the ROP covers policies related to 'Creative

Places' which includes provisions for cultural heritage resources in the context of development and that the Applications conform to the cultural heritage policies of the ROP for the same reasons as listed in paragraph 97 above.

TOP and Secondary Plan

[101] With respect to Issue 7 regarding the TOP, Mr. Currie stated that it is a goal of the TOP that cultural and built heritage resources are conserved and the TOP identifies that the review of new development applications should address the impact of the development on existing heritage resources, the proposed building design and its effect on the historic character of abutting properties and the streetscape. It was his opinion that the Applications conform to the cultural heritage policies of the TOP for the same reasons as listed in paragraph 97 above.

[102] With respect to Issue 9 regarding the Secondary Plan, Mr. Currie advised that, in lieu of adopting a Heritage Conservation District ("HCD") Study and Plan for the Village, the Secondary Plan was approved partly as a vehicle to conserve the Village's cultural heritage landscape. Mr. Currie advised that both HCDs and Secondary Plans are viable methods for preserving cultural heritage.

[103] Mr. Currie opined that the proposed development will not negatively impact the cultural heritage landscape of the Village and is consistent with the character of low-density landscape that has a variety of lot sizes and form of housing, provided that the conditions requiring review by the Urban Design Committee and the Municipal Heritage Committee are imposed. In his opinion, those conditions are appropriate and will ensure that the final form of the development conforms to the Secondary Plan.

[104] Mr. Currie concluded that, with the conditions requiring review of the Urban Design Committee and the Municipal Heritage Committee, the Applications would conform to the cultural heritage policies of the Secondary Plan and would appropriately conserve the character and the cultural heritage landscape of the Village.

[105] With respect to the CHIA prepared for the Applications and which assess the impacts of the proposed development on Willowbank, the H-K House and Dee Road, Mr. Currie stated that the CHIA found that there were no expected direct impacts to adjacent built heritage resources but that there were potential impacts to Dee Road, including potential loss of mature trees, potential visual impact, and the cumulative effects of increased traffic. The CHIA provided recommendations to mitigate the impacts and Mr. Currie noted that the Town's Heritage Planner had no objections to the conclusions of the CHIA and that the above noted conditions of approval of the Applications will address the recommendations of the CHIA.

Overall Opinion

[106] Regarding the Issues identified on the revised IL, Mr. Currie provided his opinion that:

- With respect to Issue 16, the heritage resource attributes related to Dee Road include the road itself, the trees lining the road and the proximity to heritage properties. In his opinion, the Applications conform to the cultural heritage policies of the Secondary Plan which were developed to conserve the character of Queenston and that the creation of two additional lots on the Subject Property is sensitive to the community context and is compatible with the character of the community.
- With respect to Issue 17, it is his opinion that the Applications represent good planning and are in the public interest.
- With respect to Issue 18 regarding compatibility of the two proposed lots with the existing and planned cultural heritage character of Queenston, it is his opinion that, given the conformity of the proposed development with the policies of the Secondary Plan, it can be reasonably concluded that they are compatible.

[107] Mr. Currie concluded that it is his professional opinion that the Applications should be approved as they

will not have a significant impact on adjacent heritage resources, will not have an impact on identified cultural heritage landscapes and is consistent with and conforms to the applicable provincial, regional and municipal policies regarding cultural heritage matters.

TRANSPORTATION PLANNING EVIDENCE

The Applicant/Appellant's Transportation Planning Evidence – Stew Elkins

[108] Mr. Elkins reviewed the speed study conducted on Dee Road by Paradigm Transportation Solutions Limited ("Paradigm Study") and addressed the Issues on the IL related to transportation planning. The most significant features of Dee Road with respect to transportation planning for the proposed entrances were identified as the 12% grade of the road and resulting sight line distances affecting roadway safety.

[109] With respect to Issue 7, Mr. Elkins opined that, regarding site drainage, the Applications conform to the TOP as no modifications are required to Dee Road and the volumes on Dee Road today does not warrant improvements.

[110] With respect to Issue 9 related to conformity with the Secondary Plan, Mr. Elkins opined that, regarding site drainage, the Applications do not create a significant impact on the road network and that they conform to the Secondary Plan.

[111] With respect to Issue 12 related to criteria (e) in section 51(24) of the Act addressing "the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them", Mr. Elkins opined that the existing grades provide sufficient site stopping distance along its length.

[112] With respect to Issue 7 regarding conformity with the TOP, Issue 9 related to conformity with the Secondary Plan, and Issue 12 related to criteria (e) in section 51(24) of the Act addressing “the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them”, Mr. Elkins stated the following:

- As per the ‘Statement of Agreed Facts and Issues – Transportation’, both he and Mr. Almuina are in agreement that trip generation and road capacity from the proposed lots are not a concern.
- The TOP and the Secondary Plan designate Dee Road as an unimproved road and is not subject to the Town’s roadway design standards.
- Low-volume roads, such as Dee Road, typically allow for a lower design standard than similar high-volume roads.
- The roadway design and environment provide guidance to drivers to select an appropriate speed and it should be obvious to road users that Dee Road is a lower standard road, given the narrow roadway width, limited shoulders, rolling terrain, lack of pedestrian and cycling facilities and reduced visibility.
- The existing and proposed driveways to Dee Road satisfy the minimum sight distance requirements using an operational speed of 30 kilometre per hour (“km/hr”).
- During the eight-hour speed survey conducted for the Paradigm Study, a total of five vehicles drove the entire length of Dee Road with an average speed of 22 km/hr and a maximum speed of 28 km/hr.

- The Paradigm Study showed that the 85th percentile of operating speeds of the five vehicles observed driving along Dee Road from west to east to be 27 km/hr, which was a lower speed than expected. He attributed the lower-than-expected speed of 85 percent of the vehicles to the unique characteristics of Dee Road, including the narrow pavement width and the lack of shoulders on either side of the road, coupled with trees growing up to the edge of the pavement.
- For the assessment in the Paradigm Study, the operating speed of 27 km/hr was used rather than the design speed or posted speed.

[113] Mr. Elkins opined that, based on the Paradigm Study findings, adding two lots and associated traffic will not create any remarkable impacts or changes to specific local driver expectations along Dee Road and will not result in any remarkable increase in traffic volumes on Dee Road.

[114] On cross-examination, Mr. Elkins advised that he had relied on Town By-law No. 1873-87 regarding the construction of entranceways onto the municipal road system, whereas that By-law has been rescinded and replaced by Town By-law No. 5380-22 ("BL 5380-22"). The requirements of BL 5380-22 were not relied on for Mr. Elkins analysis.

The Town's Transportation Planning Evidence – Alvaro Almuina

[115] Mr. Almuina advised the Tribunal that roadway safety was the main issue regarding driveway entrances on the two proposed lots in terms of having enough distance for vehicles travelling eastbound beyond the crest of the hill to come to a safe stop.

[116] Sight distance calculations are based on flat road surfaces and adjustments are then made to account for grade and road conditions. In this respect, Mr. Almuina used the posted speed plus 10 km/hr, primarily due to the steep grade, to calculate the

design speed to maintain the highest level of safety as possible. The Transportation Association of Canada – Manual of Geometric Design Standards for Canadian Roads (“TAC Manual”) provides a table that specifies the minimum stopping sight distance by design speed, which for Dee Road would be 85 m, but, adjusted for the grade of Dee Road, results in an additional 15 m for a total of 100 m stopping sight distance at the locations of the driveway entrances to the two proposed lots on Dee Road.

[117] Mr. Almuina cautioned that the TAC Manual only accounts for grades up to 9% and other sources place the additional value at 25 m, and when further adjusted for the chip and tar pavement condition of Dee Road, could extend the stopping sight distance to 125 m. Mr. Almuina advised that he did not adjust for the pavement condition and used an adjusted sight stopping distance of 110 m.

[118] Mr. Almuina stated that the approval of a Municipal Entrance Permit (“Entrance Permit”) through BL 5380-22 is guided by Town Policy P-OPS-22-001 (“Entrance Policy”), which includes a table requiring minimum sight distance requirements for new entrances based on posted road speed limits. In the case of Dee Road, having a speed limit of 50 km/hr, the minimum sight distance for new entrances is 120 m.

[119] Mr. Almuina noted that, in effect, the crest of the roadway to the west acts as a blind spot, and the actual sight distance for the middle lot is approximately only 55 m, being less than half the Town required 120 m distance, and the 12% grade on Dee Road exceeds the Town’s Engineering Standards accepted maximum grade for local roadways.

[120] Due to the compromised sight lines to the west, Mr. Almuina advised that the middle lot, adjacent to the retained lot, cannot accommodate a safe driveway access but that the westerly proposed lot can accommodate a driveway if located on the western most limit of the lot which is almost at the crest of the hill.

[121] With respect to the exception clause in the Entrance Policy allowing reduced design criteria where the safety and efficiency of the road is not jeopardized, Mr. Almuina opined that an exception should not apply for the proposed middle lot, and that it would more appropriately apply to cases involving a minor variance to the requirement which would not create a safety issue, but not for a significant decrease as is the case for the middle lot.

[122] In his transportation assessment of the proposed lots, Mr. Almuina advised the Tribunal that he made an assumption as to the location of the proposed driveways on the lots, as shown on his Figure 3 in his Witness Statement. From this, he calculated the available stopping sight distances from the crest of Dee Road heading east, and the approach and departure sight distance for vehicles entering and leaving the roadway.

[123] Mr. Almuina concluded that, based on a strict application of the Entrance Permit requirements and good engineering practices, he has great concern in approving an Entrance Permit for the middle lot due to insufficient stopping sight distance for eastbound traffic and limited sight distance to the west for vehicles exiting the proposed lot. He found however, that the proposed western lot did meet the minimum sight distance per the Entrance Policy and the minimum stopping sight distance accounting for grade and road conditions.

STORMWATER MANAGEMENT EVIDENCE

The Applicant/Appellant's Stormwater Management Evidence – Jason Schooley

[124] Mr. Schooley provided uncontested evidence related to stormwater management with respect to drainage and grading on the proposed lots and the retained lot. Mr. Schooley that explained the importance of planning for drainage and grading was to ensure that the overland flow of water is not directed to neighbouring properties.

[125] With respect to the Preliminary Lot Grading Plan (“Grading Plan”) for the proposed lots, Mr. Schooley advised the Tribunal that the proposed lots would drain partially to Dee Road and partially to the existing drain over the retained land and would include the proposed installation of a roadside ditch.

[126] Mr. Schooley advised that the topography of the site, including drainage ‘in a multitude of directions’ was the biggest consideration in the design of the drainage plan which resulted in a split drainage plan with a small portion draining to the back and the majority draining to the front, including toward Dee Road over the retained land via an existing underground culvert.

[127] Mr. Schooley stated that with the construction of dwellings on the proposed lots, there would be no changes to the Grading Plan and there would be no impacts on adjacent properties.

[128] Mr. Schooley advised the Tribunal he had reviewed the Grading Plan and is in agreement with the contents of the plan, which in his determination, will not impact the existing drainage systems.

PARTICIPANT STATEMENTS

[129] The Participant Statements site concerns related to cultural and heritage conservation, density, slope stability, road safety, quality of life, charm and character of Dee Road, tree canopy along Dee Road, site drainage, stormwater management, flooding, conformity with surrounding properties, traffic, conformity to the Secondary Plan, fragmentation of residential profile of Dee Road properties, urban design, negative impacts on surrounding properties and the adequacy of submitted studies.

ANALYSIS AND FINDINGS

[130] The Tribunal prefers the submissions of Ms. Elliott and Mr. Iamarino related to the appropriateness of the Applications from a land use planning perspective. The Tribunal does not have confidence in the validity of the somewhat arbitrary delineation of Mr. Dorfman's 'neighbourhood' nor his subsequent opinions.

[131] Further, with respect to TOP policy 9.3.3.(4) related to the construction of structures, Mr. Dorfman's opinion of the 'anomaly' of the form and style of the existing dwelling on 9 Dee Road, and his concern with having it repeated on the proposed lots, seems to conflate the potential form and style of construction of dwellings on the proposed lots with the issue of the creation of the lots. This Appeal relates only to the creation of the lots and not to the ultimate, and at this point unknown, form of development on the lots.

[132] The Tribunal accepts the uncontroverted evidence of Mr. Currie that the Applications do not have a negative impact on the cultural heritage of adjacent heritage resources and will not have an impact on identified cultural heritage landscapes.

[133] The Tribunal finds that the concerns raised in the Participant Statements are adequately addressed by the analysis provided by the various studies and witnesses to the hearing, as well as the Town departments in their review of the Applications, the Staff Report and the Conditions.

[134] The Tribunal finds that the Conditions, with the additional condition added at the CofA hearing requiring an overall lot grading plan, are appropriate, subject to the wording in Condition 9 for both Applications to be changed to require the Applications be finalized in sequential order rather than concurrently.

[135] The Tribunal has concerns related to the safety of the entrance to the middle lot but finds that the condition requiring the issuance of an Entrance Permit will determine

the suitability and potential of the severance of the middle lot. If an Entrance Permit cannot be issued for the middle lot, the western lot can proceed separately, subject to the Conditions being fulfilled. In this respect, the fate of the middle lot is in the hands of the Town.

[136] Finally, the Tribunal finds that, subject to appropriate Conditions of approval, the Applications have regard to matters of provincial interest, are consistent with the PPS, conform with the Growth Plan, the ROP, the TOP and the Secondary Plan, satisfy the requirements of the ZBL, represent good planning and are in the public interest.

ORDER

[137] **THE TRIBUNAL ORDERS** that the appeal is allowed and the provisional consent is to be given subject to the conditions set out in Attachment 1 to this Order.

“C.I. Molinari”

C.I. MOLINARI
MEMBER

“Eric S. Crowe”

ERIC S. CROWE
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.

Attachment 1

Consent Application B-14/21 (Part 1) for 9 Dee Road be approved, subject to the following conditions:

1. That the owner/applicant provides a legal description of Part 1, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent;
2. That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 1, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
3. That the owner/applicant, at their own expense, obtains and submits an appraisal for the purposes of payment of cash-in-lieu of parkland dedication, by a qualified appraiser, which is to be based on the fair market value of Part 1 using the direct comparison approach, to the satisfaction of the Director of Corporate Services; and that the owner/applicant pays to the Town a cash-in-lieu of parkland dedication, which shall be 5% of the appraised value of Part 1 to the satisfaction of the Director of Corporate Services;
4. That no demolition, grading or other soil disturbances shall take place on the subject property prior to the Ontario Ministry of Tourism, Culture and Sport confirming that all archaeological resources concerns have met licensing and resource conservation requirements; and that a copy of the Ministry letter is submitted to the Town, to the satisfaction of the Director of Community and Development Services;
5. That the owner/applicant enters into a Development Agreement with the Town, and that said Development Agreement be registered on the title of Part 1, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:
 - a. That Urban Design Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;
 - b. That Municipal Heritage Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be

consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;

- c. That the detailed design drawings and the proposed grading plan be reviewed by a qualified geotechnical engineer prior to the issuance of a building permit to ensure that the plans conform with the recommendations of the Slope Stability Assessment prepared by WSP Canada Inc., dated October 5, 2021, WSP reference 211-10920-00, and confirm that the detailed design will not negatively impact the slope, all approved to the satisfaction of the Niagara Peninsula Conservation Authority;
 - d. That the owner/applicant provide a lot grading plan prior to the issuance of a building permit, to the satisfaction of the Niagara Peninsula Conservation Authority and the Town's Chief Building Official; and
 - e. That any agreements of Purchase and Sale, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement;
- 6. That the owner/applicant enter into a servicing agreement with the Town, to permit the installation of a watermain on Dee Road, which shall have a minimum diameter of 150mm, to a point 3 metres west of the easterly boundary of Part 1 of the proposed severance;
 - 7. That the owner/applicant provide separate water and sanitary sewer services wholly fronting Part 1, by way of a completed application for applicable services, to the satisfaction of the Director of Operations;
 - 8. That the owner/applicant obtains approval in the form of a municipal entrance permit from the Town's Operations Department for a driveway on Part 1;
 - 9. That Consent Applications B-14/21 and B-15/21 be finalized sequentially; and
 - 10. That the owner/applicant provides an overall lot grading plan for all Parts (Part 1, Part 2, & Part 3) for management of surface drainage and collected runoff, subject to the approval of the Town's Operations Department.

Consent Application B-15/21 (Part 2) for 9 Dee Road be approved, subject to the following conditions:

1. That the owner/applicant provides a legal description of Part 2, acceptable to the Registrar, together with 1 digital copy to-scale of the deposited reference plan, if applicable, or a copy of all instruments and plans referred to in the legal description, to the satisfaction of the Town, for use in the issuance of the Certificate of Consent;
2. That the owner/applicant provides a lawyer's undertaking, to the satisfaction of the Town, to forward a copy of documentation confirming the transaction, i.e. transfer of Part 2, has been carried out, the documentation to be provided within two years of issuance of the consent certificate, or prior to the issuance of a building permit, whichever occurs first;
3. That the owner/applicant, at their own expense, obtains and submits an appraisal for the purposes of payment of cash-in-lieu of parkland dedication, by a qualified appraiser, which is to be based on the fair market value of Part 2 using the direct comparison approach, to the satisfaction of the Director of Corporate Services; and that the owner/applicant pays to the Town a cash-in-lieu of parkland dedication, which shall be 5% of the appraised value of Part 2 to the satisfaction of the Director of Corporate Services;
4. That no demolition, grading or other soil disturbances shall take place on the subject property prior to the Ontario Ministry of Tourism, Culture and Sport confirming that all archaeological resources concerns have met licensing and resource conservation requirements; and that a copy of the Ministry letter is submitted to the Town, to the satisfaction of the Director of Community and Development Services;
5. That the owner/applicant enters into a Development Agreement with the Town, and that said Development Agreement be registered on the title of Part 2, to the satisfaction of the Director of Community and Development Services, in which the owner/applicant shall agree:
 - a. That Urban Design Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;
 - b. That Municipal Heritage Committee review is required prior to issuance of a Building Permit for any new dwelling, and that any construction will be consistent with the Town's Official Plan, Queenston Secondary Plan and

associated review by the Urban Design Committee, to the satisfaction of the Director of Community and Development Services;

- c. That the detailed design drawings and the proposed grading plan be reviewed by a qualified geotechnical engineer prior to the issuance of a building permit to ensure that the plans conform with the recommendations of the Slope Stability Assessment prepared by WSP Canada Inc., dated October 5, 2021, WSP reference 211-10920-00, and confirm that the detailed design will not negatively impact the slope, all approved to the satisfaction of the Niagara Peninsula Conservation Authority;
 - d. That the owner/applicant provide a lot grading plan prior to the issuance of a building permit, to the satisfaction of the Niagara Peninsula Conservation Authority and the Town's Chief Building Official; and
 - e. That any agreements of Purchase and Sale, which may be negotiated, shall contain a clause notifying the purchaser of the Development Agreement and the requirement to comply with the Development Agreement;
- 6. That the owner/applicant enter into a servicing agreement with the Town, to permit the installation of a watermain on Dee Road, which shall have a minimum diameter of 150mm, to a point 3 metres west of the easterly boundary of Part 2 of the proposed severance;
 - 7. That the owner/applicant provide separate water and sanitary sewer services wholly fronting Part 2, by way of a completed application for applicable services, to the satisfaction of the Director of Operations;
 - 8. That the owner/applicant obtains approval in the form of a municipal entrance permit from the Town's Operations Department for a driveway on Part 2;
 - 9. That Consent Applications B-14/21 and B-15/21 be finalized sequentially; and
 - 10. That the owner/applicant provides an overall lot grading plan for all Parts (Part 1, Part 2, & Part 3) for management of surface drainage and collected runoff, subject to the approval of the Town's Operations Department.