

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 03, 2017

CASE NO(S): PL150128

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Eden Oak (Creditview Heights) Inc.
Subject: Application to amend Zoning By-law No. 74-51 -
Refusal or neglect of the Town of Halton Hills to make
a decision
Existing Zoning: RU
Proposed Zoning: RE
Purpose: To permit a development consisting of 33 single
detached lots
Property Address/Description: Part Lot 20, Concession 9
Municipality: Town of Halton Hills
Municipality File No.: D14ZBA08.004
OMB Case No.: PL150128
OMB File No.: PL150128
OMB Case Name: Eden Oak (Creditview Heights) Inc. v. Halton Hills
(Town)

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

Applicant and Appellant: Eden Oak (Creditview Heights) Inc.
Subject: Proposed Plan of Subdivision - Failure of the Town of
Halton Hills to make a decision
Purpose: To permit a development consisting of 33 single
detached lots
Property Address/Description: Part Lot 20, Concession 9
Municipality: Town of Halton Hills
Municipality File No.: D12SUB08.001
OMB Case No.: PL150128
OMB File No.: PL150129

Heard: February 27, 2017 in Georgetown, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel/Representative*</u>
Eden Oak (Creditview Heights) Inc.	John Alati
Town of Halton Hills and Regional Municipality of Halton	Jeffrey Wilker Gregory Sills
Credit Valley Conservation	Josh Campbell*
Joan Griffin, Donna Irvine and Robert Irvine	Harold Watson Simon Fung
Wayne Scott	Self-represented
Glen Williams Community Association	Andrew Leverette*

Participants

James Waldbusser	Self-represented
Jonathan Kolenda	Self-represented

DECISION DELIVERED BY JUSTIN DUNCAN AND ORDER OF THE BOARD

[1] This decision relates to a hearing concerning appeals by Eden Oak (Creditview Heights) Inc. (“Appellant”) in relation to the lack of a decision by the Town of Halton Hills (“Town”) on its applications for a zoning by-law amendment (“ZBA”) and draft plan of subdivision (“draft plan”) to permit a development of 33 single detached lots in the Hamlet of Glen Williams within the Town, in the Regional Municipality of Halton (“Region”) at a property known municipally as Part Lot 20, Concession 9 (“Subject Lands”).

[2] At the outset of the hearing, the Board was advised by counsel and representative for the Appellant, the Town, the Region, Credit Valley Conservation,

Joan Griffin, Donna Irvine and Robert Irvine that they had reached a settlement on the basis of a revised application.

[3] Additionally, the Board was advised that on the basis of the settlement reached with Ms. Griffin, Ms. Irvine and Mr. Irvine, the Glen Williams Community Association was prepared not to oppose the settlement reached by the other parties but that the Association wished to make a presentation outlining some remaining concerns about process.

[4] Wayne Scott also advised the Board that his only interest remaining related to hearing evidence about how storm water would be managed on the Subject Lands. Based on the settlement reached, Mr. Scott indicated that he did not intend to take a position on the appeal and would not lead any evidence.

[5] During the course of the hearing, Jonathan Kolenda, a participant, also indicated that he no longer wished to make a presentation to the Board and took no position on the appeal.

[6] Prior to the hearing, Yvonne Devins communicated to the Board advising that she was withdrawing her party status and she did not attend the hearing as a result.

[7] In terms of evidence, the Board heard expert planning evidence from David Matthews and expert engineering evidence from Robert DeAngelis relating to the design and engineering of stormwater ponds on the Subject Lands. Both witnesses were called by the Appellant. The Board also heard evidence from Drew Leverette for the Glen Williams Community Association in relation to various process concerns relating to the Town's processing of the Appellant's applications and from James Waldbusser relating to concerns about the powers and jurisdiction of conservation authorities in the Province to regulate for storm water management in this context.

EVIDENCE

[8] To begin, Mr. Matthews explained that the Subject Lands are approximately 8 hectares and irregularly shaped. He explained that the Subject Lands are currently vacant and located in the south part of the Hamlet of Glen Williams which is part of the Town. Mr. Matthews explained that the Subject Lands have a diverse and complex topography, being flat towards the south and sloping towards the north end of the property. The slope of the Subject Property currently serves as a separation from part of the Hamlet of Glen Williams to the north, with those properties to the north being down slope from the Subject Lands. He also explained that the Wildwood Trail, a hiking trail converted from a former rail line which is owned by the Town, runs along the south edge of the Subject Lands.

[9] Mr. Matthews explained that the revised applications before the Board consists of a proposal for 31 detached residential lots, revised from the original proposal for 33 lots, open space and open space connections, walkways, and stormwater management structures, and a single access point for regular vehicle traffic and an additional access point that will only be used for emergency purposes. Mr. Matthews explained that the revised applications do not propose a road connection to the Hamlet but rather, has access that will direct traffic through the existing urban area of Georgetown.

[10] In terms of the lot fabric proposed, Mr. Matthews explained that the proposal is for a variety of lot sizes, configurations and frontages. He explained that this has been proposed to conform with direction in the Hamlet of Glen Williams Secondary Plan ("Secondary Plan") that seeks to replicate the existing variety and eclectic mix of shapes and sizes of lots through the Hamlet.

[11] Mr. Matthews also explained that the proposed development on the proposed lots will replicate similar development in close proximity and will be similar to development proposed throughout areas of Georgetown.

[12] Mr. Matthews explained that as part of the settlement reached, the Appellant will transfer parts of the Subject Lands to the Town as environmentally important lands and that vegetative buffers will be maintained on slopes and additional plantings will be made.

[13] Mr. Matthews also explained that the applications have been through several redrafts, through which revisions have been made, among other things, to the layout of roads on the Subject Lands, the number and configuration of lots, the design of the stormwater management and pedestrian connections on the Subject Lands and developing conditions of the draft plan.

[14] Mr. Matthews reviewed the policies of the Provincial Policy Statement, 2014 (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) and opined that the applications are consistent with the PPS and conform to the Growth Plan. In particular, Mr. Matthews opined that policies relating to efficient use of servicing, assessment of heritage issues, and addressing stormwater management were fully considered and addressed in the applications. Additionally, Mr. Matthews opined that the applications have considered and addressed all matters of Provincial interest in accordance with s. 2 of the *Planning Act* (“Act”).

[15] Mr. Matthews then reviewed the policies of the Halton Region Official Plan and the Town’s Official Plan, including the Secondary Plan. Mr. Matthews explained that the Subject Lands are designated as Hamlet in both Official Plans. It was his opinion that the main purpose of the Glen Williams Secondary Plan, which sets out the most specific policies for the Subject Lands in this context, is to balance development with environmental protection. It was his opinion that the revised applications ensure visual and physical access to open space areas and create connections between areas within the Secondary Plan area in a manner that achieves this balance. Additionally, Mr. Matthews opined that the proposal will reflect the existing character of Glen Williams as promoted in design guidelines appended to the Secondary Plan. Overall, it was Mr.

Matthews' opinion that the applications conform to the various applicable Official Plan policies.

[16] Next, Mr. Matthews reviewed the criteria of s. 51(24) of the Act. It was his opinion that in reviewing the draft plan against these criteria that they had all been addressed in an appropriate manner.

[17] Mr. Matthews then reviewed an extensive list of conditions of draft plan approval that he explained are intended to address storm water management, conveyance of open space to the Town, urban and architectural design issues, parkland dedication, vegetative plantings and buffering among other matters. It was Mr. Matthews' opinion that these conditions are appropriate and recognize and reflect the policies of the Secondary Plan.

[18] Mr. Matthews next reviewed the proposed ZBA. He explained that the various provisions of the ZBA are intended to meet the specific requirements of the Secondary Plan and many standards impose more stringent standards than what would generally apply under the existing zoning by-law. For example, Mr. Matthews explained that regardless of the size of the lot, residences are to be limited to 350 square metres of lot coverage. Additionally, Mr. Matthews explained that the ZBA imposes varied setback requirements as between lots in order to ensure that the development will replicate the eclectic character of the area.

[19] Overall, it was Mr. Matthews' opinion that the draft plan and the conditions of the draft plan represented good planning and that the ZBA was an appropriate implementing instrument for the proposed draft plan.

[20] Next, the Board heard from Mr. DeAngelis. Mr. DeAngelis explained that in its currently vacant condition, the Subject Lands result in stormwater from an area of approximately 4 hectares from the Subject Lands draining to the properties owned by Ms. Griffin, Ms. Irvine and Mr. Irvine. He explained that the intent of the stormwater management structures proposed on the Subject Lands is to address the addition of

more impervious surfaces on the Subject Lands. He explained that a two-tier stormwater pond system is proposed that will divert stormwater from the Subject Lands by way of separated pipe system to catch basins at the end of Credit Street at Confederation Street which will then lead to a discharge directly at the Credit River.

[21] Mr. DeAngelis explained that as a result of the stormwater management proposed, the equivalent area now draining onto the properties of Joan Griffin, Donna Irvine and Robert Irvine will be reduced to 0.4 hectares, thereby addressing their concerns about flooding on their lands.

[22] Mr. DeAngelis also explained that the layout of the stormwater ponds had been altered to respond to concerns about the grade of pedestrian walkways. He explained that as a result, the grade of the pedestrian access that winds through the stormwater ponds is safe at a 6% grade.

[23] Finally, Mr. DeAngelis reviewed the conditions of draft plan approval relating to stormwater management and opined that the conditions reflected the discussions of experts and that he was very comfortable recommending them to the Board.

[24] On behalf of the Glen Williams Community Association, Mr. Leverette explained that historically the Subject Lands have been used as recreational greenspace by local residents. It was his view that the proposal does not fully promote a rural look in accordance with the Secondary Plan but rather, represents a manufactured landscape that was not contemplated in the development of the Secondary Plan. It was also his view that the proposal does not adequately protect natural heritage and that the proposed retaining walls and the stormwater ponds remain an issue for the community. Finally, Mr. Leverette expressed concern over the limited time the Association had to consider the revised applications prior to the Council meeting where the Town decided to support it and also the time available for the Association to consider expert reports and visual evidence filed on the appeal following revisions to filing deadlines contained in the Board's procedural order.

[25] In cross-examination, Mr. Leverette confirmed that the Association does not oppose the applications. He also confirmed that the Association did not object in October or November of 2016 to revisions to filing deadlines in the Board's procedural order. He also acknowledged that the Association did not retain its own experts to assist with its preparation for the hearing and that the Association never filed a witness statement on the appeal.

[26] Mr. Leverette also acknowledged in cross-examination that the Town had made efforts at various stages of the appeal to meet with residents and to hear their concerns about the applications, including meetings with the Association specifically. Mr. Leverette also acknowledged that the Association was provided with reports of experts as they were developed and finalized and that the Association was one of six delegations that provided a presentation to Town Council prior to it resolving to support the revised applications.

[27] Finally, the Board heard from Mr. Waldbusser. He expressed the view that although engineers have gone to great lengths to create stormwater retention ponds on the Subject Lands, that the ponds are unprecedented in the area given that they are located approximately 75 feet above the residential area below. He expressed concern about the safety of such a situation. Mr. Waldbusser explained that he had reviewed the regulatory authority of conservation authorities and that, it appeared there was nothing that specifically dealt with this particular issue that would allow Credit Valley Conservation to say no to this development. It was his view that regulatory amendments are necessary to address this lack of power.

ANALYSIS AND FINDINGS OF THE BOARD

[28] In assessing the applications for the ZBA and the draft plan, the Board is to consider whether the proposal is consistent with the policies of the PPS and conforms to the policies of the Growth Plan and any other relevant provincial policy. Additionally, the Board must consider whether the proposed planning instruments are consistent with

relevant policies of the Town and Regional official plans, including the Secondary Plan. Furthermore, specifically in relation to the draft plan, the Board is to have regard to the criteria set out in s. 51(24) of the Act.

[29] The Board has fully considered the evidence and submissions of the parties and the participants. The Board has also reviewed the extensive documentation filed with the evidence of the Appellant which included supporting studies, relevant policy documents and communications between various experts for the parties reviewing the applications.

[30] Based on the evidence and submissions, the Board finds that the revised applications are consistent with the PPS and conform to the Growth Plan.

[31] The Board has considered the applications against the policies of the various official plans and has considered the evidence of Mr. Matthews and Mr. Leverette in relation to the intent of the policies of the Secondary Plan. The Board finds that no evidence was heard from Mr. Leverette that would call into question the planning opinion evidence of Mr. Matthews that the applications are consistent with the policies of the Secondary Plan. Indeed, the Board finds that a great deal of effort has gone into revising the applications by various parties to ensure that the applications reflect not only the policies of the Secondary Plan but also the design guidelines appended to the Secondary Plan.

[32] Additionally, the Board has considered the criteria of s. 51(24) of the Act and finds, based on the evidence, that the application for the draft plan and the associated conditions of draft plan approval, address these criteria fully.

[33] Given that stormwater management was a major issue for all parties and participants from the outset of this appeal, the Board has considered the evidence relating to stormwater management with particular attention. It appears that this issue has also had significant attention paid to it by various experts for the parties, resulting in the current revised applications before the Board. Based on the evidence of Mr.

DeAngelis, the Board finds that the applications will result in an improvement over the existing condition in terms of stormwater management. The Board has considered the concerns expressed by Mr. Leverette and Mr. Waldbusser on this particular point and wishes to note that adjudicating on the issue of the jurisdiction and powers of Credit Valley Conservation is not within the purview of this Board at this hearing. But again, there was nothing in the evidence heard suggesting that safety issues relating to stormwater management was not fully addressed in the applications, whether by Credit Valley Conservation or others, as explained by Mr. DeAngelis. In its review of the documentation filed by the Appellant, the Board has considered the various geotechnical and slope stability assessments and the communication and commentary on this issue against the expert oral evidence tendered by Mr. DeAngelis at the hearing and finds nothing in the documentation that would call into question Mr. DeAngelis' overall opinion that both stormwater and slope stability issues have been considered and addressed.

[34] Finally, with regards to Mr. Leverette's concern, on behalf of the Glen Williams Community Association, that there were process issues relating to the manner in which the Town considered the application and how the other parties were able to revise the filing deadlines for expert reports for this appeal, the Board does not consider that anything requiring the Board's sanction at this point has occurred. To the contrary, based on the evidence and submissions, it appears that the Town afforded the Association and other members of the public significant information throughout this appeal regarding the Town's consideration of the applications. Additionally, the Board notes that it is fairly common for filing deadlines to be changed in situations where parties either consent or raise no objection. Here, it appears that the Association failed to object and has only raised this issue at the hearing leaving no opportunity for the other parties or for the Board to address such an objection prior to the hearing.

[35] To conclude, based on the evidence and submissions heard, the Board finds that the ZBA should be approved. The Board also finds that the draft plan should be approved, subject to the conditions of draft plan approval provided to the Board.

ORDER

[36] The Board orders that the appeal is allowed in part and further orders that:

- a. The ZBA marked as Exhibit 3 is approved and is subject to the Clerk of the Town assigning a number to the ZBA as necessary.
- b. The draft plan 24T-08001/H marked as Exhibit 2F is approved and is subject to the conditions of draft plan approval marked as Exhibit 4.

“Justin Duncan”

JUSTIN DUNCAN
MEMBER

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

Ontario Municipal Board

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