

ISSUE DATE:

March 15, 2012



MM110043

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 42(10) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Applicant: Eden Oak (Main Street) Inc.
Subject: Determination of the value of land
Property Address/Description: 60 Main Street North
Municipality: Town of Halton Hills
OMB Case No.: MM110043
OMB File No.: MM110043

APPEARANCES:

Parties

Town of Halton Hills

Eden Oak (Main Street) Inc.

Counsel

J. J. Wilker

H. T. Arnold

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

This was the first pre-hearing in this matter, conducted by teleconference. The issue before the Board is the determination of value for a payment of cash-in-lieu of parkland under subsection 42(6) of the *Planning Act*, R.S.O. 1990, c. P.13.

The Board was advised that the parties have been engaged in extensive discussions regarding the appropriate valuation date, appraisal standards to be used, and filing dates preparatory to a hearing. The parties are in agreement on these procedural matters and presented them to the Board on consent.

The parties also agreed that the appropriate valuation date is November 25, 2010, and all negotiations between the parties have been based on the valuations of that date.

Subsection 42(6.4) of the *Planning Act* sets out the statutory valuation date as "...the day before the day the building permit is issued..." In this case a building permit has not issued. The question then arises: Can the Board, in light of what appears to be clear language in the *Planning Act*, accept a valuation date that is not "...the day before the day the building permit is issued..."? The Board finds that it can accept an earlier date, and these are the Board's reasons.

There are two statutes that must be read together for the Board to reach a reasonable, appropriate and workable interpretation of subsection 42(6.4) of the *Planning Act*: the *Planning Act* and the *Building Code Act*, S.O., 1992, c.23. The Acts have what are essentially competing timelines that must be reconciled.

Subsection 42(1) of the *Planning Act* allows a municipality to require the conveyance of land for parks purposes as a condition of development or redevelopment of land. Subsection 42(6) simply allows the municipality to elect to take a payment in lieu of land to satisfy the condition. The value of the payment is the value of the land that would otherwise be conveyed.

Where the proposed development, as in this case, is subject to site plan control, the cash-in-lieu payment is treated as one of the conditions of site plan approval. Site plan conditions are cleared through the execution of a site plan agreement. For the condition regarding payment in lieu of parkland to be cleared, the payment must actually be made. For the payment to be made and finalized, the amount must be determined. For the amount to be determined, the lands must be valued.

Valuation, payment and execution of the site plan agreement simply do not occur within a single day. Discussion, negotiation and drafting the final form of agreement take time.

Subsection 8(2) of the *Building Code Act* states:

Issuance of permits:

- (2) The chief building official shall issue a permit referred to in subsection (1) unless,
 - (a) the proposed building, construction or demolition will contravene this Act, the building code or any other **applicable law** [emphasis added by the Board]

Satisfaction of section 42 of the *Planning Act* constitutes applicable law under section 1.4.1.3(1) of the *Ontario Building Code*, which states:

(xxi.1) section 42 of the *Planning Act* with respect to the payment of money or making arrangements satisfactory to the council of a *municipality* for the payment of money, where the payment is required under subsection 42(6) of that Act

To obtain a building permit, section 42 of the *Planning Act* must be satisfied. Where cash-in-lieu of parkland is being provided, the amount must be determined, payment secured and, to satisfy the municipality, paid.

Understanding the interplay of the two statutes, as well as the complexities involved in determining a valuation date, undertaking the valuation, and making the payment, lead the Board to the conclusion that the *Planning Act* language which specifies "...the day before the day the building permit is issued..." should be understood as "...a day before the day the building permit is issued...". To interpret the phrase otherwise creates a conflict between two pieces of legislation that results in the absurdity where a building permit could not be issued because section 42 of the *Planning Act* could not be satisfied. And section 42 of the *Planning Act* could not be satisfied because the valuation of the lands could not be arrived at. The lands could not be valued because the valuation date depends on the issuance of a building permit.

The Board finds that the key statutory direction is that the actual date of the issuance of the building permit is not to be used as the valuation date, thereby excluding the fact of a building permit from the valuation of the lands. In the circumstances of this case, the parties have agreed upon a valuation date that is prior to building permit issuance, namely November 25, 2010. They have also agreed that post valuation date data is generally inadmissible and look to the Board's jurisprudence, notably *Chaparral Developments Ltd. v. Halton Region Conservation Authority*, [1989] O.M.B.D. No.1019, dealing with limited exceptions. The parties also agree that the Town's appraiser shall prepare a formal appraisal in accordance with the Uniform Standards of Professional Appraisal Practice as adopted by the Canadian National Association of Real Estate Appraisers.

The Board finds that these agreements are appropriate and adds the following deadline requirements on consent of the parties:

1. By February 27, 2012 Eden Oak (Main Street) Inc. shall deliver to the Town any input information that it believes is relevant for the appraisal;
2. By April 23, 2012, the Town shall deliver a complete appraisal report to Eden Oak (Main Street) Inc.;
3. By May 21, 2012, Eden Oak (Main Street) Inc. shall deliver a peer review of the Town's appraiser's report in accordance with the appraisal standards noted above;
4. By June 18, 2012, the appraisers for the parties shall have had a meeting to scope their areas of disagreement and shall deliver a memorandum of agreement and disagreement by that date; and
5. By July 16, 2012, the Town's appraiser shall deliver any reply evidence.

The Board sets this matter down for a two-day hearing, commencing at 10:00 a.m. on Thursday, August 23, 2012, in the Town of Halton Hills Civic Centre, Georgetown.

No further Notice is required.

If difficulties arise, the Board may be spoken to.

So Orders the Board.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE CHAIR