

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



ISSUE DATE: April 16, 2021

CASE NO(S): PL200469
PL080723

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Millford Development Limited
Subject: Request to amend the Official Plan - Failure of the Town of Newmarket to adopt the requested amendment
Existing Designation: “Parks and Open Space”, “Natural Heritage System”, “Emerging Residential” and “Stable Residential”
Proposed Designated: “Yonge-Davis Provincial Urban Growth Centre”, “Emerging Residential” and “Parks and Open Space”
Purpose: To permit the development of a 12-storey residential building with 154 units and 38 townhouses
Property Address/Description: 55 Eagle Street
Municipality: Town of Newmarket
Approval Authority File No.: D9-NP-11-09
LPAT Case No.: PL200469
LPAT File No.: PL200469
LPAT Case Name: Millford Development Limited v. Newmarket (Town)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Millford Development Limited
Subject: 2006 Official Plan for the Town of Newmarket
Municipality: Town of Newmarket
LPAT Case No.: PL080723
LPAT File No.: PL080723
LPAT Case Name: Millford Development Limited v. Newmarket (Town)

Heard: April 8, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Millford Development Limited

Mark Flowers
Grace O'Brien (student-at-law)

Town of Newmarket

Kim Mullin

Regional Municipality of York

Bola Ogunmefun

**MEMORANDUM OF ORAL DECISION DELIVERED BY MARGOT BALLAGH ON
APRIL 8, 2021 AND ORDER OF THE TRIBUNAL**

[1] This Decision and Order results from the first Case Management Conference (“CMC”) by video hearing (“VH”) on the appeals under PL200469 by the Applicant/Appellant, Millford Development Limited (“Millford”), pursuant to s. 22(7) of the *Planning Act* (the “Act”), from the Town of Newmarket’s (the “Town”) failure to adopt the requested site-specific Official Plan Amendment (“OPA”) within the prescribed time, and pursuant to s. 34(11) of the Act, from the Town’s failure to make a decision on the requested site-specific Zoning By-law Amendment (“ZBA”) within the prescribed time.

[2] The purpose of the requested OPA and ZBA was to permit Millford to proceed with its development at the lands known municipally as 55 Eagle Street (the “subject lands”), originally to include a proposed 12-storey residential building with 154 units as well as 38 townhouse units. A summary of a recently revised proposal was presented at the CMC as indicated below.

[3] There is a related Local Planning Appeal Tribunal (“Tribunal”) File No. PL080723 in which Millford previously appealed the Town’s Official Plan in relation to the subject lands more than a decade ago with respect to the existing Natural Heritage System designation above the top of bank. That appeal remains outstanding. It was adjourned

in 2009 to allow Millford to explore settlement with the Town, and to make site specific applications. A concurrent CMC was held for this file in order to consider whether the two related Tribunal files should be consolidated.

[4] The Affidavit of Service for the Notice of CMC, sworn by Christina Fracassi on March 23, 2021, confirmed service on March 5, 2021 and was marked as Exhibit 1.

[5] Counsel for the original parties, Millford and the Town, participated in the VH as noted. Bola Ogunmefun appeared as counsel for the Regional Municipality of York (the "Region") and requested Party status. Given that the Region is the approval authority, the other parties consented to the request, and the Tribunal added the Region as a party to the proceedings.

[6] In addition to the Region, the Tribunal received prior requests for Party status from several individuals who reside near the subject lands being: William Healy, Shirley Charles, Darlene Gardner and Ashleigh Wedlock.

[7] The Tribunal also received a prior request for Participant status by Peter and Erin Lugomirski.

[8] Counsel for Millford, Mark Flowers, suggested to the Tribunal that the requests for Party and Participant status be deferred to a second CMC to give those seeking status an opportunity to consider the new revised proposal and whether it addresses concerns raised in relation to the original proposed development. He gave the example of concerns raised with respect to the 12-storey residential building creating shadows and noted that the new proposal no longer included the 12-storey building.

[9] Mr. Flowers and Counsel for the Town, Kim Mullin, told the Tribunal that they would not oppose any requests for Participant status but wished to reserve their right to oppose requests for Party status if sought.

[10] The Tribunal reviewed, with those observing at the CMC, the role and obligations of a party as set out in Rule 8 of the *Tribunal's Rules of Practice and Procedure* and explained that a Participant may provide only a written submission to be considered by the Tribunal. In light of the recently revised development proposal, the Tribunal agreed that it was reasonable to defer the requests for status in the proceedings to a second CMC to allow time for those interested in requesting status to determine whether their concerns were now addressed by the new proposal and/or whether they preferred to request Party or Participant status.

[11] Mr. Flowers told the Tribunal that it appeared that concerns with the original proposal mostly came from residents on Lewis Drive to the north of the subject lands. He said that the proposed development would occupy the southern portion of the subject lands, furthest from Lewis Drive. Mr. Flowers disclosed some of the differences proposed in the new development recently proposed to the Town. He explained that there would no longer be a 12-storey building. Instead, the revised development proposes 76 townhouses, which would consist of: 53 standard townhouses; 20 back to back townhouses; and 3 triplex units. Mr. Flowers said that an environmental impact study has been done, and there is a tree compensation plan, which proposes to replant trees in the non-developable portion of the subject lands. Mr. Flowers told the Tribunal that the current development proposal has two access points from Eagle Street and no access point to Lewis Drive. With the assistance of Grace O'Brien, he presented the drawing of the Conceptual Development Plan at the CMC for the revised proposal.

[12] Mr. Flowers undertook to provide details of the revised proposed development by email to those who requested them. Ms. Mullin noted that the revised proposal is posted on the Town's website.

[13] Mr. Flowers, with the consent of the other parties, requested that the related Tribunal Case files (PL080723 and PL200469) be consolidated on the grounds that they both involve the same parties (Millford, the Town and the Region), the same lands, the

same issue related to the land use designation, and there would be duplicative evidence.

[14] The Tribunal agrees that the related files (PL080723 and PL200469) should be consolidated pursuant to Rule 16.2 of Tribunal's *Rules of Practice and Procedure* for the reasons provided by Counsel in order to provide efficiencies and reduction of duplication.

[15] Mr. Flowers, with the consent of the other parties, requested that a second CMC be scheduled for the week of July 26, 2021, to allow time for the parties to explore settlement. He suggested the second CMC could address the requests for Party and Participant status, and, if settlement is reached, it could be used to schedule a settlement hearing, or alternatively, it could be used to consider a draft Procedural Order and to schedule a hearing on the merits.

[16] The Tribunal also agrees with Counsel that a second CMC be scheduled for the purpose of exploring settlement opportunities; addressing requests for Party and Participant status; and scheduling either a settlement hearing or a hearing on the merits, provided a draft Procedural Order is filed on consent by the parties prior to the second CMC.

ORDER

[17] The Tribunal orders that the Regional Municipality of York, is granted Party status in the proceedings.

[18] The Tribunal orders, on the consent of the parties, that Tribunal Case No. PL200469 and related Tribunal Case No. PL080723 be consolidated pursuant to Rule 16.2 of the Tribunal's *Rules of Practice and Procedure*.

[19] The Tribunal orders that a second Case Management Conference is scheduled for one-day on **Monday, July 26, 2021 at 10 a.m. by video hearing.**

[20] Parties and participants are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/885487525>

Access code: 885-487-525

[21] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](#) or a web application is available:

<https://app.gotomeeting.com/home.html>

[22] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: [+1 \(647\) 497-9391](#) or **(Toll Free):** [1 888 455 1389](#). The access code is **885-487-525**.

[23] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[24] The purpose of the second Case Management Conference is to address requests for Party and Participant status in the proceedings, and to schedule either a settlement hearing, or alternatively, a hearing on the merits, provided the parties file on consent a draft Procedural Order and Issues List, to the extent possible, prior to the second Case Management Conference.

[25] A copy of this Memorandum of Oral Decision and Order shall be sent to the parties and to William Healy, Shirley Charles, Darlene Gardner, and Ashleigh Wedlock who previously filed requests for Party status, and to Peter and Erin Lugomirski, who previously filed a request for Participant status (such requests pending until the next CMC). In addition, a copy shall be sent to Mary-Ann Vercammen and Victoria Wright who requested same at the Case Management Conference.

[26] No further notice will be provided.

[27] The Member is not seized.

“Margot Ballagh”

MARGOT BALLAGH
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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