

**DECISION
CONSENT**Section 53 of the *Planning Act*

Date of Decision December 16, 2022
File No(s): D08-01-22/B-00323 and D08-01-22/B-00324
Owner(s): Robert and Barbara Wilson
Location: 4104 Torbolton Ridge Road
Ward: 5 – West Carleton-March
Legal Description: Lot 13, Concession 2, Geographic Township of Torbolton
Zoning: RU
Zoning By-law: 2008-250
Hearing Date: December 7, 2022

PURPOSE OF THE APPLICATIONS

- [1] The Owners want to subdivide their property into three separate parcels of land to create two new lots for future residential development.

CONSENT IS REQUIRED FOR THE FOLLOWING

- [2] The Owners require the Consent of the Committee for Conveyances. The property is shown on a sketch filed with the application and the separate parcels will be as follows:

File No.	Frontage	Depth	Area	Lot No.	Municipal Address
B-00323	62 m	84 m (irregular)	0.8 hectares	1	4062 Torbolton Ridge Road
B-00324	96 m	86 m (irregular)	0.8 hectares	2	4094 Torbolton Ridge Road

- [3] The retained land shown on said sketch, will have a frontage of 53 metres and will contain a lot area of 36.54 ha. (90.31 ac.). This lot contains the existing detached dwelling, workshop, and three accessory structures (barns) and will be known municipally as 4104 Torbolton Ridge Road.

- [4] The applications indicate that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING

- [5] The Panel Chair administered an oath to Robert Wilson, Owner, who confirmed that the statutory notice posting requirements were satisfied.
- [6] The Committee heard a presentation from Tracy Zander, Agent for the Applicant, who advised that a noise study was submitted with the application due to the proximity to a rail corridor which also addresses vibration. She further indicated that the requested development agreement appeared to allow a vibration study, if required, at the time of development
- [7] Stephen Kukkonen of the City's Planning, Real Estate, and Economic Development Department (PRED) expressed the department's concerns regarding noise and vibration due to the proximity of the proposed lots to a railway corridor. Mr. Kukkonen acknowledged that the noise report submitted, helped to determine the conditions PRED was requesting but made reference to the 2003 Official Plan, which states that any development within 75 metres of a railway corridor must be supported by a vibration study. In response to questions from the Committee, it was acknowledged that there are no tracks in the corridor, and it is currently used as a recreational trail.
- [8] Also in attendance was Brittany Moy of the Mississippi Valley Conservation Authority.

DECISION AND REASONS OF THE COMMITTEE: APPLICATIONS GRANTED

- [9] The Committee considered any written and oral submissions relating to the applications in making its Decision.
- [10] Under the *Planning Act*, the Committee has the power to grant a consent if it is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. Also, the Committee must be satisfied that an application is consistent with the Provincial Policy Statement and has regard for matters of provincial interest under section 2 of the Act, as well as the following criteria set out in subsection 51(24):

[11] Criteria

(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;

(c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;

(d) the suitability of the land for the purposes for which it is to be subdivided;

(d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

(e) 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;

(f) the dimensions and shapes of the proposed lots;

(g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

(h) conservation of natural resources and flood control;

(i) the adequacy of utilities and municipal services;

(j) the adequacy of school sites;

(k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

(l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and

(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

[12] The Committee notes that the City's Planning Report raises "minor concerns" regarding the proximity of the proposed lots to the adjacent railway corridor. However the Majority of the Committee is satisfied that the railway corridor currently functions as a recreational pathway, that a vibration study would be difficult to conduct under the circumstances, and therefore the condition should not be imposed.

[13] Based on the evidence, the Committee is satisfied that the proposal is consistent with the Provincial Policy Statement that promotes efficient land use and development as well as intensification and redevelopment within built-up areas, based on local conditions. The Committee is also satisfied that the proposal has adequate regard to matters of provincial interest, including the orderly development of safe and healthy communities; the appropriate location of growth and development; and the protection of public health and safety. Additionally, the Committee is satisfied that a plan of subdivision of the land is not necessary for the proper and orderly development of the municipality. Moreover, the Committee is satisfied that the proposal has adequate regard for the criteria specified under subsection 51(24) of the *Planning Act* and is in the public interest.

[14] THE COMMITTEE OF ADJUSTMENT therefore grants the provisional consent, subject to the following conditions, **which must be fulfilled within a two-year period from the date of this Decision:**

1. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of the **Development Review Manager of the Relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa does not guarantee the quality or quantity of the groundwater. If, at some future date, the quality or the quantity of the groundwater becomes deficient, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the home owner.”

The Committee requires a copy of the Agreement and **written confirmation from City Legal Services** that it has been registered on title.

2. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

“The City of Ottawa has identified that there is potential organic soils, thin soils, and sensitive marine clays within the area that may require site specific detailed geotechnical engineering solutions to allow for development, the City of Ottawa bears no responsibility, financial or otherwise, to provide solutions to the deficiency, such solutions being the sole responsibility of the home owner.”

The Committee requires a copy of the Agreement and written confirmation from City Legal Services that it has been registered on title.

3. That pursuant to Section 50.1(25)(c) of the *Planning Act* and Annex 1 of the City's current Official Plan and Schedule C16 of the City's new Official Plan, the Owner acknowledges and agrees to convey to the City, at no cost to the City, an unencumbered road widening across the complete Torbolton Ridge Road frontage of the lands, measuring 13 metres from the existing centreline of pavement/the abutting right-of-way. The exact widening must be determined by legal survey. The Owner shall provide a reference plan for registration, indicating the widening, to the City Surveyor for review and approval prior to its deposit in the Land Registry Office. Such reference plan must be tied to the Horizontal Control Network in accordance with the municipal requirements and guidelines for referencing legal surveys. The Owner(s) must provide to the City Surveyor a copy of the Committee of Adjustment Decision and a draft Reference Plan that sets out the required widening. The Committee requires written confirmation from City Legal Services that the transfer of the widening to the City has been registered. All costs shall be borne by the Owner.
4. That the Owners provide a report, to the satisfaction of the City of Ottawa, demonstrating the adequacy of the aquifer with respect to quality and quantity to support the proposed development, failing which the Owners construct a new well on the severed lot and provide a report, to the satisfaction of the City of Ottawa, to demonstrate the adequacy of the aquifer with respect to quality and quantity to support the proposed development. The report must include a septic impact assessment to evaluate the water quality impact of the on-site septic system on the receiving aquifer.

The Owners' report must demonstrate the following to the City of Ottawa:

- That the construction of any new well on the severed parcel is in accordance with the Ministry of the Environment, Conservation and Parks
- That the quality of the water meets the Ministry of the Environment, Conservation and Parks Regulations, Standards, Guidelines and Objectives;
- That the quantity of water meets all the Ministry of the Environment, Conservation and Parks requirements.
- That the septic impact assessment meets the Ministry of the Environment, Conservation and Parks requirements.

A qualified Professional Engineer or Professional Geoscientist must prepare the report. It is the Owner's responsibility to coordinate the person drilling a new well, if required, and the professional noted herein in order to properly satisfy this condition.

If the accepted report recommends specific mitigation measures or design requirements, the Owners shall enter into a Development Agreement with the City, at the expense of the Owners, which is to be registered on the title of the property, which includes those recommendations. In instances where the subject site has sensitive soils, the drilling of a well or the conveyance of a 30-centimetre

reserve may be required. Both the report and any required Development Agreement shall be prepared to the satisfaction of **Development Review Manager of the Relevant Branch within Planning, Real Estate, and Economic Development Department, or his/her designate.**

The Report shall be prepared as per Procedure D-5-4 "Technical Guideline for Individual On-Site Sewage Systems: Water Quality Impact Risk Assessment" and Procedure D-5-5 "Technical Guideline for Private Wells: Water Supply Assessment".

5. That the Owner(s) provide evidence (payment receipt) to the Committee that payment has been made to the City of Ottawa of Cash-in-lieu of the conveyance of land for park or other public recreational purposes, plus applicable appraisal costs. The value of the land otherwise required to be conveyed shall be determined by the City of Ottawa in accordance with the provisions of By-law No. 2022-280, as amended. Information regarding the appraisal process can be obtained by contacting the Planner.
6. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

"The City of Ottawa or its assigns or successors in interest has or have rights of way within 300 meters from the land the subject their of their maybe alterations to or expansions of the railway facilities on such rights of way in the future including the possibility that the railway or it assigns or successes as aforesaid may expand its operations which expansion may affect the living environment of the residents in the vicinity notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwellings. The City of Ottawa will not be responsible for any complaints or claims arising from use of such facilities and/or operations on over or under the force said rights of way."

The Committee requires a copy of the Agreement and **written confirmation from City Legal Services** that it has been registered on title.

7. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenant/notice that runs with the land and binds future Owner(s) on subsequent transfers:

"A rail corridor exists nearby; the occupants will not make any claim upon the City of Ottawa, or any future rail operator from the use of such facilities and/or operations on, over or under the aforesaid right-of-way."

The Committee requires a copy of the Agreement and **written confirmation from City Legal Services** that it has been registered on title.

8. That the Owner enter into an Agreement with the City, at the expense of the Owner(s) and to the satisfaction of **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate**, which provides the following covenants/notices that run with the land and binds future Owner(s) on subsequent transfers:

"The Owner, or any subsequent owner of the whole or any part of the subject lands, acknowledges and agrees that all of the recommendations of the 4104 Torbolton Noise Feasibility review, prepared by BT Engineering, as well as the Guidelines for New Development in Proximity to Railway Operations must be incorporated into any proposed development notwithstanding other more conservative requirements."

"As a requirement for the issuance of any building permit, the Owner, or any subsequent Owner of the whole or any part of the subject lands, acknowledges and agrees that the following mitigation measures shall be incorporated in the development of the lot to be known as 4062 Torbolton Ridge Road and construction of any dwelling(s):

- a. Development setback requirement of 30 metres from the railway corridor
- b. The Dwelling(s) shall be constructed of masonry or concrete construction equivalent
- c. Windows should be minimized and double- glazed windows should be utilized with full acoustic seals on the walls facing the railway
- d. Air conditioning shall be provided to allow occupation without opening windows
- e. The specified 3 metre noise wall should be modified to 2.5 metres and the berm be raised from 2.5 metres to 3 metres. In the absence of design, the noise wall should cover the parcel adjacent to the corridor and include 10 metre wing walls."

"As a requirement for the issuance of any building permit, the Owner, or any subsequent Owner of the whole or any part of the subject lands, acknowledges and agrees that the following mitigation measures shall be incorporated in the

development of the lot to be known as 4094 Torbolton Ridge Road and construction of any dwelling(s):

- a. Identify a development envelope setback a minimum of 75 metres from the railway corridor. All future development must be contained within the defined development envelope unless the Owner(s) prepare and submit a Vibration Study to the satisfaction of the **Development Review Manager of the relevant Branch within Planning, Real Estate and Economic Development Department, or his/her designate** and implement the recommended mitigation measures as described in the approved Vibration Study.
- b. Windows should be minimized and double- glazed windows should be utilized with full acoustic seals on the walls facing the railway
- c. Air conditioning shall be provided to allow occupation without opening windows”

The Committee requires a copy of the Agreement and **written confirmation from City Legal Services** that it has been registered on title.

9. That the Owner(s) file with the Committee a copy of the registered Reference Plan prepared by an Ontario Land Surveyor registered in the Province of Ontario, and signed by the Registrar, **confirming the frontage and area of the severed land. If the Registered Plan does not indicate the lot area, a letter from the Surveyor confirming the area is required.** The Registered Reference Plan must conform substantially to the Draft Reference Plan filed with the Application for Consent.
10. That upon completion of the above conditions, and **within the two-year period outlined above**, the Owner(s) file with the Committee, the “electronic registration in preparation documents” for a Conveyance for which the Consent is required.

"Fabian Poulin"
FABIAN POULIN
VICE-CHAIR

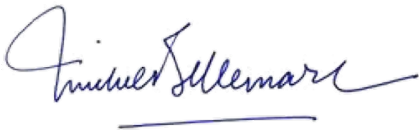
"Terence Otto"
TERENCE OTTO
MEMBER

"Steven Lewis"
STEVEN LEWIS
MEMBER

"Martin Vervoort"
Dissenting on removal of condition 6.
MARTIN VERVOORT
MEMBER

"Jocelyn Chandler"
JOCELYN CHANDLER
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **December 16, 2022**.



Michel Bellemare
Secretary-Treasurer

NOTICE OF RIGHT TO APPEAL

To appeal this decision to the Ontario Land Tribunal (OLT), a completed appeal form along with payment must be received by the Secretary-Treasurer of the Committee of Adjustment by **January 5, 2023**, delivered by email at cofa@ottawa.ca and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,
101 CentrepoinTE Drive, 4th floor, Ottawa, Ontario, K2G 5K7

The Appeal Form is available on the OLT website at <https://olt.gov.on.ca/>. The Ontario Land Tribunal has established a filing fee of \$400.00 per type of application with an additional filing fee of \$25.00 for each secondary application. Payment can be made by certified cheque or money order made payable to the Ontario Minister of Finance, or by credit card. Please indicate on the Appeal Form if you wish to pay by credit card. If you have any questions about the appeal process, please contact the Committee of Adjustment office by calling 613-580-2436 or by email at cofa@ottawa.ca.

Only the applicant, the Minister or a specified person or public body that has an interest in the matter may appeal the decision to the Ontario Land Tribunal. A "specified person" does not include an individual or a community association.

There are no provisions for the Committee of Adjustment or the Ontario Land Tribunal to extend the statutory deadline to file an appeal. If the deadline is not met, the OLT does not have the authority to hold a hearing to consider your appeal.

If a major change to condition(s) is requested, you will be entitled to receive Notice of the changes only if you have made a written request to be notified.

NOTICE TO APPLICANT(S)

All technical studies must be submitted to Planning, Real Estate and Economic Development Department a minimum of **40 working days** prior to lapsing date of the consent. Should a Development Agreement be required, such request should be initiated **15 working days** prior to lapsing date of the consent and should include all required documentation including the approved technical studies.

Ce document est également offert en français.

Committee of Adjustment
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