

DECISION CONSENT

Date of Decision	August 11, 2023
File No(s):	D08-02-22/B-00306
Owner(s):	6305 Dobson Inc.
Location:	6305 Dobson Lane
Ward:	21 – Rideau-Jock
Legal Description:	Part of Lot 23, Concession 2, former Township of Goulbourn
Zoning:	RU
Zoning By-law:	2008-250
Hearing Date:	August 1, 2023, in person and by videoconference

PURPOSE OF THE APPLICATION

- [1] The Owner wants to subdivide its property into two separate parcels of land to create one new lot for future residential development.

CONSENT IS REQUIRED FOR THE FOLLOWING

- [2] The Owner requires the Consent of the Committee for Conveyance.
- [3] The severed land, shown as Part 1 on a Sketch filed with the application, will have a frontage on Richland Drive of 63.4 metres, a depth of 220.8 metres, and will contain a lot area of 2.01 hectares. This vacant parcel will be municipally known as 6311 Dobson Lane.
- [4] The retained land, shown as Part 2 on the sketch, will have a frontage of 144.2 metres on Richland Drive, an irregular depth of 810 metres and a lot area of 46.38 hectares. This vacant parcel will be known municipally as 6305 Dobson Lane.
- [5] The application indicates that the Property is not the subject of any other current application under the *Planning Act*. Related Consent Applications (D08-01-22/B-00304 & D08-01-22/B-00305) and Minor Variance Applications (D08-02-22/A-00290 & D08-02-22/A-00291) were filed for the abutting property at 6335 Dobson Lane, and will be heard concurrently with this application.

PUBLIC HEARING

- [6] Prior to the scheduled hearing on January 11, 2023, the Committee received an adjournment request from Adam Thompson, Agent for the Owner, seeking more time for consultation with City staff. Adjournment requests were also filed by residents C. Noonan and D. and M. Pearen, for more time to review the applications. On January 11, Mr. Thompson spoke to his request and, with all parties in agreement, the applications were adjourned to February 15.
- [7] On February 15, the applications were adjourned to March 15 at the request of City Planner Sean Harrigan for continued discussions between with the Applicants and City staff, then further adjourned to May 15 for the same reason.
- [8] On May 15, Mr. Thompson requested more time for the Applicants to consult with City Legal Services regarding which version of the Official Plan – the 2003 Official Plan (“2003 OP”) or the 2022 Official Plan (“new OP”) – applies to these applications. The applications were adjourned to July 4.
- [9] On July 4, the Committee heard from Murray Chown, also acting as Agent for the Owner, and from Roberto Aburto, solicitor for the Owner. Mr. Aburto addressed the issue of which Official Plan applies, summarizing arguments in his written correspondence on file. He referred the Committee to the “*Clergy* principle,” according to which, applicants may be entitled to have their land use planning applications evaluated under the policies in place at the time the application is made. He argued that the Committee first received the applications on September 22, 2022, before Ministerial approval of the new OP on November 4, and therefore the 2003 OP applies.
- [10] Mr. Harrigan summarized the City’s position, arguing that the materials submitted on September 22 were incomplete. He noted that the applications were not deemed complete by Committee staff until December 14. He also explained that, under the transition policy approved by City Council on October 27, 2021, City Planning staff were directed to review applications under both the 2003 OP and the new OP, and to apply whichever policies are more restrictive.
- [11] The Applicants requested that the Committee render a decision on the applicability of the *Clergy* principle and which Official Plan applies. The Panel Chair explained that the Committee’s procedural rules do not contemplate advance decisions on procedural matters. The Committee therefore agreed to adjourn the applications to give the Applicants more time to prepare a presentation on the merits of the application that addresses relevant policies of both Official Plans, with emphasis on those policies of the new OP that prejudice the applications. The Committee therefore adjourned the applications to August 1.

Oral Submissions Summary

- [12] At the hearing on August 1, the Committee heard from Mr. Thompson, who provided a slide presentation, a copy of which is on file with the Secretary-Treasurer and available from the Committee upon request. Mr. Thomson

summarized the proposal and noted that the Applicants disagreed with amendments proposed by the City that would change the frontage of the proposed lots to 0 metres, since the extension of Richland Drive would be a condition of provisional consent and the frontage would apply if the severances were finalized. He also referred the Committee to a table highlighting relevant policy differences between the 2003 OP and the new OP.

- [13] The Committee also heard from Mr. Aburto, who reiterated the Applicants' position on the *Clergy* principle, highlighting that the applications were received by the Secretary-Treasurer on September 22, 2022, and that the submissions after November 4 were insignificant and did not change the applications.
- [14] City Planner Sean Harrigan summarized the arguments in his Planning Report on file concerning the applicability of the new OP, as well as the City's objections to the expansion of the Village boundary, the potential for the proposed severance and road extension to impede the future planned expansion of the Village, and the impact of the proposal on the biodiversity and ecological function of the area, which is subject to a Natural Heritage Systems Core Area overlay under the new OP.
- [15] Mr. Chown reiterated that the more restrictive policies of the new OP, which effectively prohibit a road extension and the creation of lots without existing street frontage, are prejudicial to the applications.
- [16] Drew Paulusse, Senior Biologist (GEMTEC) for the Applicants, addressed concerns regarding the Provincially Significant Wetlands (PSW) on the property, highlighting that the impact of the proposed construction would be negligible given the distance between the PSW and the proposed building envelopes. He also stated that the overall loss of woodlands would not be significant and that options exist for re-vegetation.
- [17] In closing, Mr. Chown submitted that the applications would not expand the Village of Richmond, emphasizing that the proposal was for large country lots, as compared to the concentrated suburban development found within the Village. He also submitted that the opportunity would still exist to expand the Village boundary in the future and that the proposal complies with the Provincial Policy Statement.
- [18] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION REFUSED

Applications Must Satisfy Statutory Tests

- [19] The Committee considered all written and oral submissions relating to the applications in making its Decision.
- [20] 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):

[21] 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).

Evidence

[22] Evidence considered by the Committee included all oral submissions made at the hearing, as highlighted above, and the following written submissions held on file with the Secretary-Treasurer and available from the Committee Coordinator upon request:

- Application and supporting documents, including a planning rationale, plans, an Environmental Impact Statement, and a sign posting declaration.
- Gowling WLG (Canada) LLP, email received May 2, 2023, addressed to City Legal Services.
- Gowling WLG (Canada) LLP, email received April 11, 2023, addressed to City Planner Sean Harrigan.
- Gowling WLG (Canada) LLP, email received June 29, 2023, with Book of Authorities (Clergy Principle).
- Applicants' email dated May 2, 2023, requesting adjournment; dated January 9, 2023, requesting adjournment.
- City Planning Report received July 28, 2023, objecting to the applications; received June 29, 2023, objecting to the applications; received April 28, 2023, objecting to the applications; received March 10, 2023, objecting to the applications; received February 10, 2023, objecting to the applications and requesting adjournment; received January 6, 2023, objecting to the applications.
- City Legal Services, email received April 27, 2023, addressed to City Planner Sean Harrigan.
- Hydro Ottawa email dated July 28, 2023, with comments; dated June 20, 2023, with comments; dated April 27, 2023, with comments; dated March 8, 2023, with comments; dated February 8, 2023, with comments; dated January 9, 2023, with comments.
- Hydro One email dated July 24, 2023, with comments; dated April 28, 2023, with comments.

- McNaughton Hermsen Britton Clarkson, representing TransCanada PipeLines Limited, email dated April 24, 2023, with comments; dated February 28, 2023, with comments; dated January 31, 2023, with comments; dated December 23, 2022, with comments.
- A. and B. Kelly, residents, email received January 4, 2023, with comments.
- C. Noonan, resident, email received January 9, 2023, with concerns and requesting adjournment.
- D. and M. Pearen, residents, email received January 5, 2023, with concerns and requesting adjournment.
- E. and D. Sterritt, residents, email received January 6, 2023, with objections.
- J. Clark, resident, email received January 5, 2023, with comments.
- M. Covey, resident, email received March 13, 2023, with concerns; received January 9, 2023, with concerns.
- P. Blancher, resident, email received January 5, 2023, with concerns.
- R. Ferch and L. Featherston-Ferch, residents, email received January 9, 2023, with concerns.
- A. Foss, resident, email received January 1, 2023, with comments.
- Rideau Valley Conservation Authority, email received July 27, 2023, with no objections; received July 3, 2023, with no objections; received April 27, 2023, with no objections; received March 10, 2023, with no objections; received February 14, 2023, with no objections.
- Ministry of Transportation, email received August 1, 2023, with no comments; received March 7, 2023, with no comments; received February 7, 2023, with no comments.

Effect of Submissions on Decision

[23] The Committee considered all written and oral submissions relating to the applications in making its Decision.

[24] The Committee notes that the City's Planning Department "objects" to the application, concluding that: "Extending Richland Drive from within to outside the Village Boundary is contrary to the Provincial Policy Statement and Official Plan

regarding expansion of settlement areas, development within proximity of a settlement area, and protection of natural heritage features.”

- [25] Based on the evidence, two of the four Members of the Committee who heard the application (Panel Chair William Hunter and Member Terrence Otto) agree with the conclusions of City Planning staff that the application is not consistent with the Provincial Policy Statement, which promotes efficient land use, focusing growth and development within urban and rural settlement areas. Without the benefit of a more comprehensive planning analysis to provide direction on future development in this location, these Members find that there is insufficient evidence to demonstrate that the proposal will not impede the future expansion of the settlement area, and therefore find that the application is premature and not in the public interest. These Members are therefore not satisfied that the proposal has adequate regard for matters of provincial interest and the criteria under subsection 51(24) of the *Planning Act*, or that a plan of subdivision is not necessary.
- [26] Conversely, the other two Members of the Committee (Members Jocelyn Chandler and Beth Henderson) find that the application is consistent with the Provincial Policy Statement, in that the proposed residential development is locally appropriate and has evaluated and respectfully recognized the natural features. These Members find that the lots are sized and configured to accommodate the constraining elements of rail line, watercourse, flood plain, treed areas and trajectory of the existing municipal road, and that the application is not premature, as the extension of a municipal road and lifting of the 1-foot reserve are within the Applicants' purview to satisfy through the imposition of appropriate conditions. They also note that the development of this land for residential purposes is in the public interest as it supports additional residential units at a locally appropriate scale and in an environmentally sensitive deployment.
- [27] Members Chandler and Henderson also agree that the applications were submitted prior to November 4, 2022, in a form which was substantially complete and constituted, for the purpose of evaluating the proposal under the appropriate policies, a “valid application.” In the relatively unique situation of the transition between the Council and Ministerial approval of the Official Plan, these Members find that this is sufficient for the Committee to consider the application under the policies of the 2003 OP. Members Chandler and Henderson also agree that the proposed severances are consistent with 2003 OP and do not hinder expansion any more than the existing Richland/Underhill and Lulworth lot fabric already does, rather, they logically complete the existing community within the natural boundary of the adjacent watercourse and rail corridor, at an appropriate density. These Members find that the Applicants have demonstrated with metrics commensurate to this time and location that future residential village development could occur on the retained lands, noting that the ultimate expansion of the Village with services will provide further subdivision opportunities adjacent to and within all the individual lots in this community. These two Members are therefore satisfied that the proposal has adequate regard for matters of provincial interest and the criteria

specified under subsection 51(24) of the Planning Act, and that a plan of subdivision is not necessary.

[28] Pursuant to the Committee's *Rules of Procedure*, any application on which there is a tie vote shall be deemed to be refused.

"William Hunter"
Opposed
WILLIAM HUNTER
CHAIR

"Terence Otto"
Opposed
TERENCE OTTO
MEMBER

"Beth Henderson"
In support
BETH HENDERSON
MEMBER

ABSENT
MARTIN VERVOORT
MEMBER

"Jocelyn Chandler"
In support
JOCELYN CHANDLER
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **August 11, 2023**.



Matthew Garnett
Acting 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 **August 31, 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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