

2023-12-08



VALIDATION OF TITLE (CONSENT) APPLICATION
COMMENTS TO THE COMMITTEE OF ADJUSTMENT
PANEL 2

PLANNING, REAL ESTATE AND ECONOMIC DEVELOPMENT DEPARTMENT

Site Address: 136 Acacia Avenue
Legal Description: Part of Lots 5, 6, 7 & 8, Registered Plan 4M-46
File No.: D08-01-23/T-0004
Report Date: December 8, 2023
Hearing Date: December 12, 2023
Planner: Cass Schlauzero
Official Plan Designation: Inner Urban Transect, Neighbourhood
Zoning: R1C[1260]

DEPARTMENT COMMENTS

The Planning, Real Estate and Economic Development Department **recommends refusal** of the application.

DISCUSSION AND RATIONALE

Section 57 (1) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, permits a committee of adjustment to issue a certificate of validation with respect to land that was previously conveyed and subsequently found to be in contravention of the current *Act* or a predecessor of it. At its hearing on November 14, 2023, the Committee of Adjustment adjourned the subject application to allow Legal Services staff the opportunity to review the application package and provide a subsequent legal opinion with respect to the purported prior contravention of the *Act*.

The subject property, along with 138 Acacia Avenue, was subject to a previous application seeking consent from the Committee for a lot line adjustment. Staff recommended refusal of the application on the grounds that there was not sufficient evidence to demonstrate that 136 and 138 Acacia had not merged on title and were indeed separate parcels of land. At its hearing on May 17, 2023, the Committee adjourned the application sine die.

Planning Services and Legal Services staff reviewed the subject application package and the research findings prepared by staff for the prior consent application, as they relate to the history of the creation and transfer of associated parcels of land.

136 and 138 Acacia Avenue are comprised of parts of lots 5 through 8 on Plan 4M-46

(see Figure 1), which was registered in December 1914. The Plan shows this area of Rockcliffe Park as being comprised of largely rectangular lots, generally with 36 to 50 feet of frontage, with most being 90 feet deep.

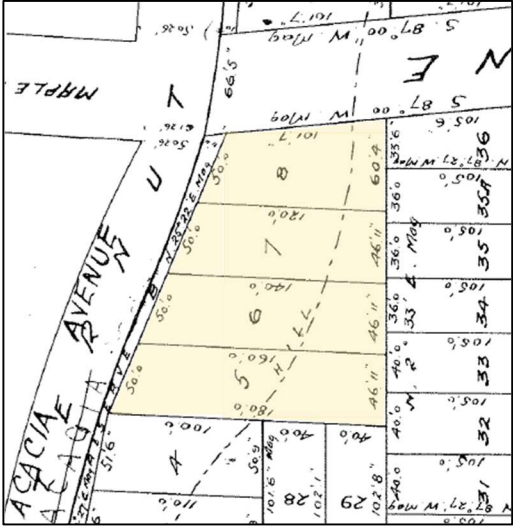


Fig. 1: Lots 5 - 8 on Plan 4M-46, registered in 1914.

An easement for the Ottawa Electric Railway (OER) over several lots on Plan 4M-46, including parts of lots 5 through 8, was registered as Parcel 1787 in December 1937. Registration of the easement did not have the effect of severing the parcel from any abutting lands or creating a conveyable parcel of land. In June and August 1944, parts of lots 5 through 8 were removed from Parcel 1787 and re-entered to the Parcel Register as Parcels 2317 and 2345, respectively. This method of parcel creation appears to pre-date any provincial planning legislation and therefore staff deem it to have had no impact on validity of title. The eastern and northern limits of these parcels abutted the OER easement lands (see Figure 2).

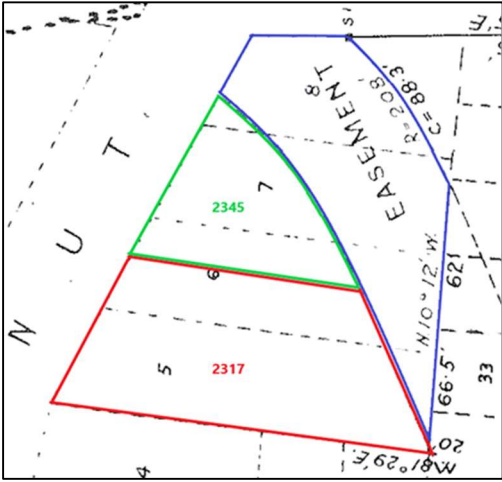


Fig. 2: Approximate configuration of Parcels 2317 and 2345 overlaid onto Plan 4M-80 (registered 1947).

Plan 4M-80 was registered in June 1947 and was comprised of large estate lots that generally represent the current lot configuration of Rockcliffe Park along Maple Lane, Maple Place, Juliana Road, Beechwood Avenue, and portions of Wood Avenue and Roxborough Avenue. The lots along Acacia Avenue were excluded from Plan M-80 and subsequent development along this road largely reflected the previous Plan 4M-46.

Parcel 2733 (138 Acacia Avenue) was registered as a conveyable parcel of land in August 1947 and transferred to Acacia Realty Ltd. The parcel's irregular shape reflects its creation from the remnant parcels of lots 5 through 8 on Plan 4M-46 still subject to the OER easement and excluded from Parcels 2317, 2345 and Plan 4M-80 (see Figure 3).

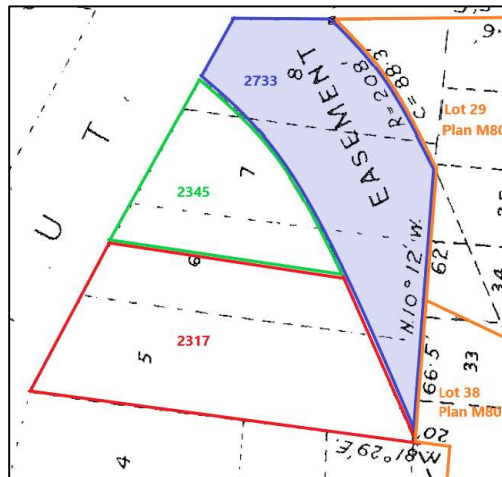


Fig. 3: Parcel 2733 (later 138 Acacia Avenue) abutting Parcels 2345, 2317, and Lots 29 & 38, Plan 4M-80.

Parcel 2733 and Lot 38 on Plan M80 were acquired by Ethelwynne Kemp via a single transfer in July 1948. Because Parcel 2733 was not a whole lot on a plan of subdivision and had never been subject to a previous severance from another parcel, it merged on title with Lot 38. The new parcel was registered as Parcel 3008 (see Figure 4).

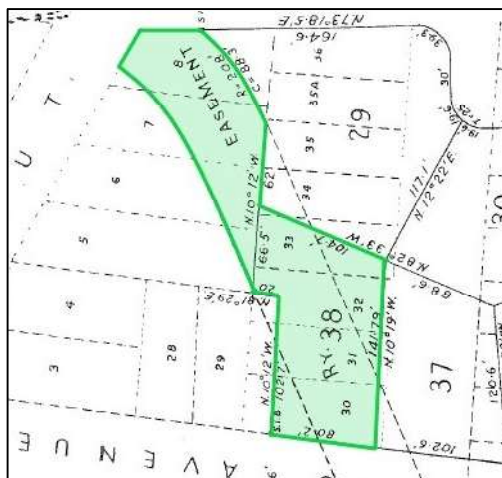


Fig. 4: Parcel 3008, comprised of former Parcel 2733 and Lot 38, Plan 4M-80.

In March 1955 a portion of Parcel 2317, corresponding with parts of Lots 5 and 6 on Plan M-46, was released. The remainder of said parcel, together with all of Parcel 2345, were re-entered into the Registry into Parcel 4511, now 136 Acacia Avenue. These actions also pre-dated any provincial planning legislation and staff deem it to have had no impact on validity of title to 136 Acacia Avenue. The OER easement over most of Parcel 3008 was released in June 1959. In July 1961, E. Kemp conveyed a portion of Parcel 3008, corresponding with the former Parcel 2733 and subsequently registered as Parcel 6089, to Gordon Crean. Parcel 6089 would later be addressed as 138 Acacia Avenue. E. Kemp retained ownership of Lot 38 on Plan M80.

The acquisition of Parcel 6089 by G. Crean, who also owned the abutting Parcel 4511, marked the beginning of 136 and 138 Acacia Avenue existing under common ownership (see Figure 5). The parcels have since been conveyed together to several subsequent owners, with no evidence that either parcel existed or was intended to exist independently of the other as of the 1961 transfer.



Fig. 5: Parcels 4511 (March 30, 1955) and 6089 (July 13, 1961). Parcels 4511 and 6089 reflect the configuration of 136 and 138 Acacia Avenue from July 13, 1961 to present.

The Notice of Hearing for the subject application does not identify the purpose of the validation of title application as it relates to 136 Acacia Avenue. Rather, it states that the contravention of the *Planning Act*, R.S.O. 1960, was related to the 1961 conveyance of 138 Acacia Avenue (then Parcel 6089) from E. Kemp to G. Crean.

The acquisition of Parcel 6089 by G. Crean, regardless of his ownership of the abutting Parcel 4511 and despite Parcel 6089 having been conveyed to him in contravention of the *Act*, has no bearing on the validity of the title to Parcel 4511. Further review of the documents submitted with the application did not reveal any other contravention of the *Act* with respect to the subject property.

Because the conveyance of Parcel 6089 contravened the *Act*, ownership of Parcel 6089 was not legally transferred to G. Crean in 1961 and subsequently could not have merged

on title with Parcel 4511. Therefore, his and all subsequent conveyances of Parcel 4511 (136 Acacia Avenue) were not in contravention of the *Act* despite occurring concurrently with transfers of Parcel 6089. No subsequent title merger could have occurred because Parcel 6089 remains under the ownership of E. Kemp and/or their estate.

Based on the above, staff do not find any evidence that validation of title is required for the subject property, and thereby **recommend refusal** of the application.

ADDITIONAL COMMENTS

The following legal opinion was provided by Garrett Schromm, Associate Legal Counsel to the City Manager's Office:

The applicant has not clearly articulated a past "contravention" of the *Planning Act*, R.S.O. 1960, which they are now seeking to correct.

The 1961 conveyance from Kemp to Crean of the 138 Acacia lands did not include the 136 Acacia Lands. Crean owned those lands as of October 1955.

There has been no evidence that Crean did not obtain good title to the 136 Acacia lands.

There was a suggestion at in the submissions of the Applicant that:

"Therefore, in 1975 when Mr. Crean attempted to transfer 136 Acacia Avenue (Parcel 4511) and 138 Acacia Avenue (Parcel ~~3008~~ 6089) to Mr. Stanfield, once again Planning Act 1970 S. 29 (7) provides that no property could pass to Mr. Stanfield because the two parcels abut and neither has had the benefit of a "consent" under what is now S.53 of the Planning Act."

I disagree with half of the above statement. While the 1975 conveyance from Crean to Stanfield was ineffective to convey title to 138 Acacia Avenue, it *was effective* to convey title to 136 Acacia Avenue. There is no evidence that Crean owned any land abutting 136 Acacia Avenue at the time. The 136 Acacia lands were not merged with the 138 Acacia lands because the previous 1961 conveyance from Kemp was ineffective.

In the absence of a past contravention, there does not appear to be a basis to approve this validation of title application. The applicant appears to have good title to 136 Acacia.



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