



Subject: Orangeville Highlands Phase II
Draft Plan of Subdivision, Official Plan Amendment
and Zoning By-law Amendment Applications
File Nos. S 1/10 and OPZ 5/10
Direction for Local Planning Appeal Tribunal Pre-
Hearing Conference

Department: Infrastructure Services

Division: Planning

Report #: IS-PL-2019-008

Meeting Date: February 11, 2019

Orangeville Forward – Strategic Plan

Priority Area: Sustainable Infrastructure

Objective: Plan for Growth

Recommendations

That Report No. IS-PL-2019-008, Orangeville Highlands Phase II Draft Plan of Subdivision, Official Plan Amendment and Zoning By-law Amendment Applications, File Nos. S 1/10 and OPZ 5/10, Direction for Local Planning Appeal Tribunal Pre-Hearing Conference be received;

And that staff and the Town’s legal counsel be directed to attend the Local Planning Appeal Tribunal pre-hearing conference scheduled for February 26, 2019 and represent the following position with respect to the appeals of the applications:

1. That the Town is unable to support the applications in their present form and a decision on the applications is premature at this time;
2. That the Town continue to negotiate, as part of the ongoing review which is currently underway, with the applicant to address unresolved issues with the applications;

- 3. That the Town wishes to facilitate further discussions and consultation among all parties to this appeal in an effort to resolve the outstanding questions and concerns regarding the development proposal; and**
- 4. That the Town wishes for further public consultation to occur before Council makes its decision regarding the applications under appeal;**

And that staff and the Town's legal counsel be authorized to take such necessary steps as required, to implement the foregoing;

And that staff be directed to facilitate further discussion among the parties and participants to the appeal in an effort to resolve issues and concerns with the applications;

And that staff be directed to report back to Council on the progress of the discussions among parties and participants as well as the overall review process as necessary and prior to any subsequent hearing or pre-hearing event to be scheduled by the Tribunal.

Background

In 2010, Orangeville Highlands Ltd. and Brucedale Investments Limited submitted applications for a draft Plan of Subdivision, Official Plan (OP) Amendment and Zoning By-law Amendment to the Town. The purpose of these applications is to facilitate a proposed residential plan of subdivision development on the subject lands, which are located on the north side of Hansen Boulevard and immediately west of the Orangeville Mall. The proposed development has been modified from its original submission and now consists of 623 residential units, which includes approximately 191 townhouse dwellings and 432 apartment dwelling units, as well as various blocks for parkland, open space conservation and stormwater management facility uses.

Appeal Proceedings

In October 2017, the applicant appealed their applications to the Local Planning Appeal Tribunal ("LPAT") citing Council's failure to make a decision within the time periods specified by the Planning Act. The basis of this appeal was primarily due to pending provincial changes to appeal adjudication procedures (i.e., replacing the Ontario Municipal Board ("OMB") regime with a new LPAT). Filing the appeals before the pending legislative changes came into effect preserved the applicant's ability to pursue their appeals under the then existing OMB rules and procedures.

An initial pre-hearing conference was held on June 4th, 2018. Notification for this was given in accordance with the Tribunals procedures, i.e. issued at least 35 days prior to the pre-hearing date to all landowners within 120m of the subject lands. The Notice was also provided to anyone who had requested further notification with respect to the

applications and to all required public agencies. At the June 4th pre-hearing, the Tribunal granted party status to the applicant, the Town and Credit Valley Conservation (CVC). In addition, the Tribunal formally identified a number of nearby neighbours as participants in the appeal proceedings, some of whom appear to be associated with the Hansen High Density Awareness Group (HHDAG), being a community-based group of concerned residents in the community who have formed themselves to express their collective concerns and comments on the proposed development.

The proceedings at the June 4th pre-hearing addressed the background to the application review process, including the updated documentation in support of the revised (current) development proposal that was submitted to the Town earlier that year. In light of this, the Tribunal recognized that in order to reach a point where the parties and participants could understand and assess the revised proposal, additional time would be needed. The Town also advised the Tribunal that it would like to hold a public meeting to consider the revised proposal. The Tribunal therefore scheduled a second pre-hearing conference for February 26, 2019 with the objective of finalizing a Procedural Order and Issues List with respect to the updated submission materials and to provide an opportunity to consider any other matters.

Analysis

Application Review Process

The updated submission documentation was circulated to internal Town departments and external public agencies for review and comment. The purpose of this review was to determine whether the conclusions, methodology and recommendations contained in technical reports submitted by the applicant are appropriate and acceptable. In this process, staff within the circulated departments and agencies who have professional qualifications and expertise in the respective disciplines of the submission studies conducted their own independent technical reviews of the studies. The focus of the reviewing department/agency was dependent upon the scope and mandate of that party. If among the internal department and external agency staff review parties, there were no staff in a particular discipline qualified to review a submission study in the same field, the Town retained a 3rd party peer review consultant in that discipline to review the study on its behalf. The Town followed an impartial procurement process to retain any peer review consultant and the costs to cover peer reviews are borne by the applicant.

Planning staff rely on the impartial comments and expertise provided by the reviewing departments/agencies and retained peer review consultants (where applicable) to determine whether the technical information supporting the applications is acceptable. This ultimately informs staff's review and determination as to whether the various planning policy conformity/consistency tests with respect to impacts and compatibility can be met by the proposed development.

The agency and departmental review of the updated application submission was completed in November 2018 and the technical comments received were provided to the applicant for their response. The comments generally required additional information through revised and/or addendum submission documents to clarify matters related to:

- urban design and architectural compatibility;
- potential traffic impacts and mitigation measures;
- OP policy conformity;
- stormwater management and infiltration;
- parkland and trail system facility design for the proposed parkland and open space areas;
- potential impacts to natural environment features and appropriate mitigation measures; and
- engineering design matters associated with the proposed subdivision layout.

In addition to the department and agency circulation, public consultation also forms an important part of the application review. A public meeting was held on September 10, 2018 to share the updated proposal with the public and receive questions and comments about the applications under review. Public comments received through this process have also been remitted to the applicant for their response and can be summarized as follows:

- Concerns regarding the density of development and the resulting impacts to the community;
- Concerns regarding impacts to drinking water quality and quantity for nearby domestic private wells, including impacts to groundwater infiltration;
- Concerns about potential impacts to natural features and wildlife, including habitats, corridors, and wetland areas;
- Concerns regarding the proposed design, built-form and aesthetic qualities of the proposed development, including the proposed massing and parking configuration for the buildings;
- Concerns with potential traffic impacts associated with the proposed development;
- Concerns that the influx of new residents has the potential to impact existing infrastructure and community services and is not being matched by new employment opportunities in the town;
- Questions regarding impacts to municipal services and whether existing capacity can accommodate the proposed development;
- Interests in the lands being used for other purposes, including parkland, mixed-use commercial/residential and/or other residential unit types.

The applicant is expected to address the comments obtained through the application review and consultation process to the satisfaction of Town and agency staff. This occurs through the submission of revised and/or updated information which in turn, is reviewed by agency and departmental staff to determine if their comments have been satisfactorily addressed. A submission and review dialogue between the applicant and reviewing parties continues with the objective of having all issues resolved. If the issues can be resolved, Planning staff would be in a position to bring forward a recommendation report for a decision on the applications.

Of course, if issues cannot be resolved due to differences in the interpretation of policy documents or due to differences in opinion related to the impact of the development (e.g. impact of traffic flow or impact of stormwater) the matter(s) in dispute would proceed to a hearing for determination.

The applicant is in the process of preparing updated/revised submission documents in response to the review and consultation comments, which is anticipated to occur following the February 26th pre-hearing conference. This will then necessitate further review by the Town and external agencies such as CVC to determine whether the comments have been addressed or if further modifications and review are necessary.

Staff recommend that based on the outstanding comments and areas of concern with the applications as outlined above, the submission cannot be supported in its current form and it would therefore be premature to take a position on the applications at this time. Town staff will continue to work with the applicant and other reviewing parties to address the issues and areas of concern as part of the ongoing application review process.

January 28, 2019 Council Delegations

At the January 28, 2019 Council Meeting, delegations were made by a representative from the HHDAG, the applicant's planning consultant and a resident from the Starview Acres subdivision (i.e. north of the subject lands in the Town of Mono) regarding the subject applications. While the consultant presented an overview of the proposed development and application process summary, the resident and HHDAG representative delegations expressed the following concerns with the applications and appeal process:

- That a decision on the applications is premature and additional time is needed for the community to review the application submission materials.
- That the applications should not be evaluated in conjunction with the Town's current OP document since it is in need of an update and is undergoing a review to this effect.
- A rigorous 3rd party peer-review of all application submission materials is necessary.

- The submission materials are outdated and do not reflect present standards and policies.
- Concerns with impacts to the natural environment, groundwater recharge, drinking water quality and quantity for neighbouring private wells and traffic impacts remain unresolved.
- Concerns associated with residential density proposed for this site and impacts to the community, including demands on existing infrastructure and service levels.

In the following paragraphs, staff endeavour to explain how the concerns expressed by the delegations are being addressed through the review process and to recommend an approach to an enhanced degree of dialogue and consultation with the parties.

Review in context of OP under review

One of the concerns expressed by the HHDAG relates to the appropriateness of reviewing this application in the context of the Town's existing OP. While the Town's OP will be updated in the coming months, it is impractical to suggest that development applications cannot move forward until the update is complete. All applications must be reviewed for conformity to current policies and regulations, and any decision on a planning application must conform to current provincial, county and Town planning documents. In the event of a conflict between the Town's OP and provincial or county planning policy, the more restrictive policies would prevail, provided that consistency/conformity with current provincial and county policy is maintained.

Request for 3rd party peer-review of all application studies

When evaluating the need for a rigorous 3rd party peer review, it is important to consider the review process that is undertaken prior to the approval of any development application. Property owners that want to develop their land must submit sufficient supporting documentation to demonstrate that the proposed development complies with all applicable legislation, regulations, guidelines and policies. As noted above, Town staff possess many of the competencies required to evaluate such supporting documentation in an unbiased manner. Where the required technical competencies are not possessed by in-house staff, outside assistance is sought. Much of this assistance is provided by CVC, which provides comments on matters of an environmental nature. When neither the Town nor CVC has the required expertise to review technical documentation, the Town hires a consultant to conduct the review. Note that while the consultant is working for the Town and is paid by the Town, we invoice the developer for all such costs. This arrangement ensures that the review consultant is "arm's length" from the developer and therefore unbiased. In conclusion, it would be redundant and costly for the Town to engage additional consultants to conduct an independent peer review of the same supporting documentation being reviewed by Town staff, our consultant and CVC.

Natural environment and groundwater impacts

The expressed concerns of HHDAG include hydrogeology (groundwater recharge, impacts to water quantity and quality in nearby private wells) and other environmental issues (potential impacts to natural features and wildlife, including habitats, corridors, and wetland areas). The Town relies on CVC for advice in such matters, including delineating the limits of development abutting natural features. In the case of the subject applications, the limits of development adjacent to the Middle Monora Creek corridor have been determined to the satisfaction of CVC in accordance with their policies for the protection of natural features.

Impacts to existing infrastructure and adherence to planning policy

Other concerns expressed by HHDAG include impact of the development on existing Town infrastructure, compliance with planning policy and traffic. Town staff possess expertise in evaluating the adequacy of existing infrastructure to accommodate proposed development, including identifying any upgrades that may be required. Furthermore, Town Planning staff possess expertise in assessing development proposals for compliance with Town, County and Provincial planning requirements. While the Town relies on an outside consultant for advice on traffic issues, they are working directly for the Town.

Creation of a sub-committee to address concerns with the applications

Council directed staff to investigate a path forward to facilitate further discussion between the parties and participants to this matter, including the potential creation of a sub-committee of Council to address issues surrounding the applications. Staff have considered the concept of creating a committee in an effort to resolve concerns and have consulted with the Town's legal counsel since this relates to a matter under appeal. Planning staff as well as the Town's legal counsel recommended that the Town not create a sub-committee as a means to facilitate further discussion between the parties and participants for the reasons outlined below.

1. The Town is already involved in and a party to an appeal process that: (i) encourages discussion among the parties; and (ii) offers the assistance of the Tribunal to conduct a formal mediation if requested by the parties.
2. If a sub-committee is established there will be the initial tasks of determining who should and who should not be on the committee, which may be challenging and potentially redundant in the context of the parties and participants identified in the appeal. The sub-committee will not be able to do anything further than what the parties to the hearing will be able to do as part of the negotiation/mediation process that the Tribunal operates under. If a sub-committee were to be established, it would likely be redundant given that negotiations are likely to occur as part of the Tribunal's process.

3. A committee requires a specific mandate to define its focus and to provide a measure of its overall effectiveness. For this particular matter, an overall focus of the committee potentially being to ensure that any future development on the lands occurs in an appropriate manner without adverse impacts might be interpreted differently among its members, based on inherently different perspectives and interests of the respective members.
4. In addition, to ensure that such a committee operates proficiently in fulfilling its mandate, the parameters of its function, including the structure and frequency of meetings must be defined. This may, depending on the composition of the committee, be subject to requirements to hold meetings in public or report back to Council in a public forum. This could impair the ability of the sub-committee to reach a settlement as some parties, especially the applicant, may not wish to discuss some matters in public.

Staff and the Town's legal counsel recommend that it is best to proceed through the 'usual' negotiation/mediation route in this appeal proceeding rather than creating a sub-committee.

It is important to note that under the LPAT procedures for this appeal, there are key distinctions between parties and participants in terms of their expected role and participation. Parties are required to participate fully in proceedings and are responsible for filing documentation and presenting formal arguments in support of their position. They are also entitled to seek costs and may be subject to an order for costs if the Tribunal deems their conduct to be frivolous, vexatious or with intentional delay. Participants have a more limited role and do not fully take part in the proceedings. They may only provide a statement on some or all issues of appeal. Participants are not permitted to provide expert witnesses or cross-examine witnesses of other parties and are also not entitled to, or potentially be responsible for costs.

The pre-hearing scheduled for February 26th, will require the Town and other parties to provide their Issues List for a hearing event. The Issues List serves as the framework for the issues remaining to be resolved before the Tribunal and assists in establishing the matters that are in dispute amongst the parties. It is only the parties, and not participants, that create the formal Issues List for the hearing. Once the parties have collectively established an Issues List, it can be used as the foundation for settlement discussions amongst the parties.

It is also important to note that subject to all parties agreeing otherwise, only parties to a hearing, and not participants, are able to engage in formal settlement discussions. The purpose of limiting parties to settlement discussions is to make certain that the settlement discussions do not become too unwieldy and complicated. It is also the parties who must consent to a settlement presented to the Tribunal if it is to be

presented as a settlement. If all parties consent to a settlement it will, in most circumstances, be accepted by the Tribunal.

It should be noted that the pre-hearing scheduled for February 26th will provide an opportunity for current participants and other persons to seek party status in the proceedings. If granted party status, they will be permitted to be involved in settlement discussions.

For the above reasons, staff and the Town's legal counsel recommend that the Town not establish a sub-committee and that the Town advise during the February 26th pre-hearing conference that it is prepared to enter into settlement/mediation discussions with the other parties to the proceeding, including any persons that attain party status at the February 26th pre-hearing.

Once the Issues List has been finalized and approved by the Tribunal, it is recommended that staff arrange a meeting amongst the various parties to the appeal for the purpose of trying to settle the issues in dispute and to reach a complete settlement. If the parties are not successful in reaching a settlement amongst themselves, staff further recommends that staff suggest to the applicant and the other parties that all parties seek Tribunal assisted mediation to attempt to reach a settlement.

To achieve an enhanced degree of dialogue in an effort to resolve concerns, it is recommended that the Town put forward the objective at the next pre-hearing conference for all parties and participants to consult further with one another on the application review process. The intent of this approach is to provide a greater opportunity for the applicant to explain how community and specifically HHDAG concerns are being addressed. It should be recognized however, that due to difference in responsibilities between party and participant status, only the parties to the matter are permitted to refine and resolve issues and participate in any final settlement discussions.

Financial Impact

There are anticipated financial impacts with respect to the Town's legal counsel representation and attendance at the upcoming Pre-Hearing Conference and their role in providing legal support for the Town with respect to this appeal matter.

Respectfully submitted:
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Attachments:

1. None