

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



ISSUE DATE: April 23, 2021

CASE NO(S): PL190278

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 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Megandy Preston-Coles
Subject: Proposed Plan of Subdivision
Property Address/Description: Part of Broken Lot 13, Concession 15
Municipality: Township of East Ferris
Municipal File No.: SB-2018-02
LPAT Case No.: PL190278
LPAT File No.: PL190278
LPAT Case Name: Preston-Coles v. East Ferris (Township)

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Megandy Preston-Coles
Subject: Proposed Official Plan Amendment No. OPA-2018-02
Property Address/Description: Part of Broken Lot 13, Concession 15
Municipality: Township of East Ferris
LPAT Case No.: PL190278
LPAT File No.: PL190513

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Megandy Preston-Coles
Applicant: 1851477 Ontario Inc.
Subject: By-law No. C-2019-02
Property Address/Description: Part of Broken Lot 13, Concession 15
Municipality: Township of East Ferris
LPAT Case No.: PL190278
LPAT File No.: PL190514

Heard: Written Submissions

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Municipality of East Ferris	D. N. Germain* K. Vergis-Mayo*
Megandy Preston-Coles	Self-represented
1851477 Ontario Inc.	H. G. Elston* M. J. Hodgson*

DECISION DELIVERED BY BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL

[1] The Municipality of East Ferris (“East Ferris”) has brought a Motion to dismiss the Appeal of Megandy Preston-Coles (“Appellant”) without a hearing. The relief sought in the Motion is granted. These are the Tribunal’s reasons.

BACKGROUND

[2] 1851477 Ontario Inc. (“Applicant”) applied for approval of a draft plan of subdivision and associated Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBLA”) for development of Part of Broken Lot 13, Concession 15 in East Ferris.

[3] East Ferris approved the plan of subdivision and adopted the associated OPA and ZBLA.

[4] The Appellant provided comments and made submissions at the public meetings and the meetings of the Planning Advisory Committee in opposition to the proposed development. Following Notice of the adoption of the draft plan of subdivision, the Appellant appealed the decision of East Ferris to approve the plan of subdivision. She

did not appeal the decisions to adopt the OPA or the ZBLA.

[5] The only matter before the Tribunal is the Appeal of the approval of the plan of subdivision and this Motion to dismiss that Appeal without a hearing.

MATERIALS BEFORE THE TRIBUNAL

[6] A Case Management Conference (“CMC”) had been scheduled previously to organize matters for the anticipated hearing of the appeal. The CMC was cancelled, and the Motion was directed to be dealt with by way of Written Submissions.

[7] For this Written Motion the Tribunal had before it the Motion by East Ferris, the Response in opposition filed by the Appellant, the Response in support filed by the Applicant and the Reply filed by East Ferris.

[8] The Motion Record of East Ferris included the Affidavit of Greg Kirton, sworn December 4, 2020. Mr. Kirton is the Manager of Planning and Economic Development with East Ferris. Mr. Kirton set out the chronology and facts. The Tribunal accepts and relies upon this Affidavit.

REQUEST FOR LIMITED PARTY STATUS

[9] The Applicant supports the East Ferris Motion.

[10] The Applicant had filed a request for Party status, expected to be dealt with at the CMC. With the CMC cancelled, that request was not decided. The Applicant now seeks Party status in this Written Hearing for the purpose of responding to the Motion.

[11] The Tribunal received no objection to the request for limited Party status in this Motion.

[12] The Applicant has a clear and obvious interest in the proceedings and had made

submissions to the approval authority prior to the approval decision being made.

[13] The Tribunal added the Applicant as a Party to these proceedings for the limited purpose of filing a Response to the Motion.

[14] The Applicant's Response included the Affidavit of Marcel Degagne, sworn January 5, 2021. Mr. Degagne owns 50% of the shares in the Applicant company, which in turn owns the lands to be developed for this proposed subdivision.

[15] Mr. Degagne's Affidavit identifies the several technical studies filed by the Applicant in support of the application, including an Environmental Impact Study, a Hydrogeology Assessment and Servicing Options Opinion Statement and the Planning Analysis Report.

NO APPARENT LAND USE PLANNING GROUND

[16] The East Ferris Motion has been brought pursuant to s. 51(53) of the *Planning Act* ("Act"). This section of the Act sets out the circumstances in which an appeal of the approval of a plan of subdivision may be dismissed without a hearing. East Ferris relies on the first circumstance, set out below:

Dismissal without hearing

(53) Despite the *Statutory Powers Procedure Act* and subsection (52), the Tribunal may, on its own initiative or on the motion of any party, dismiss an appeal without holding a hearing if,

- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could give or refuse to give approval to the draft plan of subdivision or determine the question as to the condition appealed to it ...

[17] From an examination of the Appeal and Response to the Motion, the Appellant's grounds for appeal may be grouped into two categories: concern with process and

concern with planning impact.

Process Concerns

[18] The Tribunal groups the grounds concerned with process into four items: notice, bias, conflict of interest and actions of the East Ferris Council.

Notice:

[19] The Appellant asserts that improper notice was given with the requisite information not included and the breadth of the notice too constrained for the public meetings. This is not an apparent land use planning ground on which the Tribunal could give or withhold approval of the draft plan of subdivision. Moreover, the Tribunal notes that the Appellant attended and made submissions at the public meetings and that correspondence was submitted from area residents regarding the proposed plan of subdivision.

Bias:

[20] The Appellant asserts that the studies and documentation on which East Ferris relied was biased and not a neutral evaluation of the proposal. The Tribunal understands the principal concern here to be that the studies and analyses should not be relied upon because these expert studies and opinions were submitted by the Applicant rather than by East Ferris or a consultant retained by East Ferris.

[21] The Tribunal understands these materials to have been required by the municipality and filed by the Applicant as part of its complete application. The fact that they have been filed by the Applicant is not an apparent land use planning ground on which the Tribunal could give or withhold approval of the draft plan of subdivision.

Conflict of Interest:

[22] The Appellant asserts that pecuniary conflicts of interest were not disclosed by a Member of Council when the proposed development was to be discussed and decided. Allegations of conflict of interest are not matters within the jurisdiction of the Tribunal to decide. An allegation of a conflict of interest is not an apparent land use planning ground on which the Tribunal could give or withhold approval of the draft plan of subdivision.

Actions of Council:

[23] The Appellant asserts that the decision process was neither transparent nor accountable. In particular, the Appellant suggests that the Council disregarded public input opposed to the proposed development. The Tribunal has no doubt that the Appellant sought a negative decision from Council that was not achieved. Disagreement with the final decision of Council on a proposal is not an apparent land use planning ground on which the Tribunal could give or withhold approval of the draft plan of subdivision.

Planning Impact Concerns

[24] The Appellant did raise potential land use planning grounds when asserting that the proposed development would negatively impact surrounding and nearby natural heritage and environmentally sensitive lands, storm water management, water quality and quantity and the impact of increased density. Simply expressing a concern, and using the language of a potential planning ground, is not sufficient for a potential land use planning ground to rise to an apparent land use planning ground in the meaning of the Act. The concerns remained vague and general in scope and were not tethered to the proposed development.

[25] The Tribunal is left with no doubt at all that the Appellant is strongly opposed to the decision of East Ferris Council to approve this draft plan of subdivision. It is further clear that the Appellant wishes the Tribunal to deny the Motion and hold a hearing to enable her concerns to be aired. The Appellant's principal objective for the hearing is to

air her concerns regarding process, as stated in the penultimate paragraph of the Appellant's Response to the Motion:

...the Appellant's primary objective ... is to ensure integrity, transparency and accountability in the system. It is also a primary objective of the Appellant that public safety, the environment and the climate is protected by the Provincial Policy Statement. It is clear that the Municipality is biased in the administration of the Planning Process, as demonstrated by the Conflict of Interest, the work that was done in favour of the Applicant, and the disregard for public input in the Planning Process...

CONCLUSION

[26] The Tribunal does not dismiss an appeal lightly. Nor does the Tribunal require that an Appellant set out all the details of the case they intend to call when they file a Response to a Motion to dismiss. The Appellant must, however, meet the requirements of the Act and set out clearly and specifically the apparent *land use planning* grounds of its Appeal.

[27] In this case, and pursuant to s. 51(53) of the Act, the Tribunal finds and is of the opinion that there are no apparent land use planning grounds on which the Tribunal could give or withhold approval of the draft plan of subdivision.

ORDER

[28] The Tribunal orders that the Appeal by Megandy Preston-Coles is dismissed.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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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