

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



**ISSUE DATE:** January 22, 2019

**CASE NO(S):** PL180129

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

Appellant:	Kevin Squires
Subject:	By-law No. 751-6/17-12
Municipality:	City of Greater Sudbury
OMB Case No.:	PL180129
OMB File No.:	PL180129
OMB Case Name:	Squires v. Greater Sudbury (City)

**Heard:** November 7, 2018 in Sudbury, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Kevin Squires ("Appellant")

Self-represented

Dalron Construction Limited  
("Applicant"/"Dalron")

Kim Mullin\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER ON  
NOVEMBER 7, 2018 AND ORDER OF THE TRIBUNAL**

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## INTRODUCTION

[1] This appeal before the Tribunal arises from the passage of By-law No. 2018-9Z (“the ZBLA”) by the City of Greater Sudbury (“City”) on January 9, 2018, which amended Comprehensive By-law No. 2010-100Z. The ZBLA enables the development proposed by the Applicant Dalron to convert and enlarge a vacant school to a six-storey building that will contain up to a 120 unit retirement home and related uses (“Development”). The property is located on a large block of land on Dublin Street in the City (“Site”).

[2] The Appellant and his spouse reside on one of the residential lots immediately adjacent to the Property, in proximity to the single entrance to the Property off of Dublin Street, and to the south of an existing driveway that runs just inside, and parallel to the south boundary of the Development site (the “South Driveway”). The Appellant’s appeal (“Appeal”), as filed, raises safety concerns related to traffic and vehicular movement on the South Driveway as described herein. Evidence on behalf of the Appellant was provided by Mr. Mart Kivistik, who was qualified to provide land use planning evidence, and by the Appellant himself.

[3] The City did not attend the Hearing. Dalron tendered evidence through two expert witnesses, Ms. Kris Menzies who was qualified by the Tribunal to provide expert evidence in land use planning and Mr. Toivo Rukholm who was qualified to provide expert evidence in the area of transportation planning and traffic engineering.

[4] At the outset of the hearing, Mr. Gaston Robert, who also resides near the Development, requested and was granted Participant status. However, before the Tribunal reached the point of receiving his testimony, Mr. Robert departed from the hearing and did not return. No other person appeared in favour of, or opposed to, the Development.

## **ISSUE**

[5] The specifics of the Development and the Site, and the roadways are explained below. It is the location of the primary internal driveway necessary to access the Rear Development Area of the Site, where the additional parking and the Residence Building will be located (and the related safety and adverse impact concerns) that is the primary, and only, real issue in this hearing, as the Appellant objects to the proposed use of the South Driveway for the Development. The Appellant believes that the Development should be revised so that the North Driveway within the Site, becomes the primary point of access to the Rear Development Area and Residence Building.

[6] As the Tribunal considers the Appeal, it must determine whether the ZBLA is consistent with the Provincial Policy Statement, 2014 (“PPS”), conforms to applicable provincial growth plans and the City’s Official Plan (“OP”), and represents good planning in the public interest.

## **THE DEVELOPMENT, SITE AND PHYSICAL CONTEXT**

[7] The evidence as to the proposed form of the Development and the physical context of the Development and Site is not in dispute. As a former elementary school property, the 3.65 hectare Property is a large block of land surrounded by an established residential neighbourhood to the north, south, east and west. The developed portion of the Site is to the north, and in part of the southern boundary of the Site, separated from adjacent residential properties along the perimeter with natural and topographical features such as Junction Creek, slopes, a small low-lying floodplain, and wooded areas.

[8] The Site is fully serviced by municipal water and sewer and is surrounded by three municipal roadways but fronting only on Dublin Street with 65 metres of frontage. Public transit is nearby. The single wide entrance into the Site (“Entrance”) is at the

southeast corner of the Site, off of Dublin Street just before the street curves ninety degrees to the south. The neighbourhood is an established and stable residential neighbourhood comprised of low-rise single-detached and semi-detached dwellings. A 14-storey apartment building is also located immediately to the west of the Property.

[9] The Development will involve the re-use of all of the existing building components, including the gym, as shown on the Concept Plan at Tab 16, Exhibit 3 (the “Complex”) without the need for demolition of the complex, which is in an elongated built-form running from west to east.

[10] The proposed six-storey building containing either apartments or guest suites (“Residence Building”), and a possible adjacent amenity/services building, as well as the largest block of parking, are all to be located to the rear (west) of the existing Residence Complex, parallel to the north boundary. For the purposes of this Decision, this western area of the Property can be referred to as the “Rear Development Area”. An enclosed building link is proposed to allow for indoor movement between the Residence Building in the Rear Development Area and the northwestern corner of one point of the existing Complex.

[11] The Development layout will not change the location of the existing South Driveway that currently extends from the Entrance off of Dublin Street and runs the length of the entire south boundary of the Property and will lead to the Rear Development Area, which is currently an expanse of pavement. The South Driveway previously accessed rear parking and playground areas of the former school. The South Driveway, as shown in the Concept Plan, will represent the main and only point of access to the entire Rear Development Area and the new Residence Building from the Entrance.

[12] The aerial photograph showing the existing building Complex and the Concept Plan, both show the location of a second driveway that also leads from the same

Entrance. From the Entrance, this second driveway first runs north along the east boundary and then veers to the left to run along the entire length of the north walls of the Complex westerly to the back and north area of the Site ("North Driveway"). It currently serves as a second means of accessing what will be the Rear Development Area, but is now a large expanse of pavement. In the Concept Plan however, that North Driveway will end at the east face of the proposed Residence Building, which is to be placed along the northern-most part of the Rear Development Area close to the rear Junction Creek watercourse ravine.

[13] The South Driveway on the west side is constrained between the south boundary of the Site and the south face of the Gymnasium. As the Concept Plan shows, immediately to the east of the Gymnasium, there is an entrance to a smaller parking area (the "South Parking Lot"), which is configured such that vehicles exiting this South Parking Lot are stopped just to the east of the Gymnasium at a stop sign located there, and face directly towards the Appellant's rear yard to the west of the dwelling. Vehicles exiting this South Parking Lot either turn right to continue up the sloped South Driveway to the Rear Development Area, or turn left down the sloped South Driveway to the Entrance of the Site. The view of a driver looking west and right, when stopped at the stop sign and exiting the South Parking Lot, is partially obscured by the southeast corner of the Gymnasium Building.

## **THE APPELLANT'S PROPERTY**

[14] The specifics of the Appellant's property and its relation to the Development Property are important as it relates to the Appellant's concerns and position on this Appeal. The Appellant and his spouse reside at 1090 Dublin Street which is immediately to the south of the Site. The photographs and other documentary evidence, and some of the oral testimony, as it depicts the size and layout of the Appellant's residence property, are not disputed.

[15] The Appellant's lot is smaller than those in the nearby area. The front of the property contains a driveway on the east side, and front of the lot accessing Dublin Street at the point that the street curves to the south. To the rear of the Appellant's modest sized residence, there is a rear-yard amenity area separated from the Site by a wooden fence. Due to the small lot, and the positioning of the dwelling, there is a minimal side yard area to the north of the property adjacent to the south boundary of the Development Site. Within this north side yard, there is a side deck that extends towards the front of the property and along the side. The evidence confirms that the north face of this deck extends right to the north lot line of the Appellant's lot, and might, to a slight degree, encroach onto the south boundary of the Site.

[16] The Appellant's north-side deck and north side-yard, including a side entrance and window, are in fairly close proximity to the south boundary of the Site, and of significance, is also in close proximity to the South Driveway as it rises in elevation westerly from the entrance, and runs to the south of the former gymnasium. The photographic evidence before the Tribunal confirms that currently, there is only a low curb defining the southern edge of the South Driveway and there is no guard rail.

[17] The photographs are fairly straightforward in depicting the context of the Appellant's lot relative to the Site. Although exact elevation figures were not provided, the photographs (Exhibit 3, Tab 6 and Exhibit 3, Tab 36) clearly indicate that the elevation of the Appellant's property is lower in elevation than the South Driveway. Since the South Driveway rises in elevation from the Dublin Street entrance, and the Appellant's lot elevation does not similarly rise, the bank slope from the south side of the South Entrance down to the surface of the Appellant's lot, and the difference in elevation, is greater in the rear yard area of the lot than the side and front of the lot.

## **PLANNING CONTEXT**

[18] The Planning Context is also straightforward. The Property is designated as Living Area 1 under the City's OP which permits a wide variety of residential uses and institutional uses. The Property is zoned Institutional and as such permits various defined institutional uses which includes a retirement home, as a type of special needs facility, and thus that portion of the proposed Development which will contain care units and facilities for residents does not require rezoning. The permitted uses currently do not include multiple apartment units however, and the ZBLA is thus required to permit this additional use. The Property is subject to site-plan control.

## **EVIDENCE, DISCUSSION AND ANALYSIS**

[19] As indicated, the focus of the evidence in this Appeal is whether or not the use of the South Driveway represents a concern for the health and safety of the public, and more specifically the Appellant and Ms.Lori Ridley-Pamser, thus creating an issue of adverse impact and incompatibility. That question is related to the concept of the Development as it will cause the South Driveway to be the only means of direct access to the Rear Development Area and whether it would be appropriate to instead relocate the primary access route to the Rear Development Area and Residence Building to the north utilizing the existing North Driveway.

[20] The uses or design of the remainder of the Development is not at issue, save and except only as it relates to the south façade of the Gymnasium and the southeast corner of the Gymnasium as it may obstruct site lines for drivers of vehicles stopped at the exit to the South Parking Lot.

[21] The Appellant's expressed concerns as to safety and traffic on the South Driveway are not unreasonable and are based on valid observations and past experience, which the Tribunal finds to be genuine. Messrs. Squires and Kivistik

testified that on one occasion a vehicle had left the South Driveway, went through the fence and ended up into the Appellant's backyard. The photographic evidence would substantiate the expressed fear that any vehicle that jumps the in-place small curb will end up onto the deck, in their living room or in their backyard because of the noted change in elevation from the South Driveway down to the level of the Appellant's lot. In winter driving conditions, with the significant slope of the South Driveway, maneuverability or control of vehicles on ice and snow would indeed increase the risk of accident.

[22] The Tribunal finds that Mr. Squires has been forthright, genuine and direct in expressing his concerns with respect to the South Driveway – concerns which, in the Tribunal's view are understandable, focused and based on credible concerns, and not mere conjecture or apprehension. Mr. Squires' concerns relating to safety and traffic are not disingenuous given the proximity of the slope of the South Driveway, relative to the slope and elevation of his dwelling and property, and side-yard and deck.

[23] The Tribunal finds that this does not similarly apply to the Appellant's concerns about vehicle exhaust about which, the Tribunal has no real evidence.

[24] The question then for the Tribunal is whether appropriate measures have been, or can be taken with respect to the South Driveway and the exit from the South Parking Lot to mitigate or eliminate any such safety concerns or adverse impacts arising from the increased use of the South Driveway such that the appropriateness of the ZBLA should be seriously considered. It is the finding of the Tribunal that with the additional stipulations provided for in this Decision, based upon all of the evidence, appropriate measures have, and will be implemented to address the Appellant's concerns.

[25] Turning first to traffic control around the exit of the South Parking Lot, the Tribunal accepts Mr. Rukholm's and Ms. Menzies' evidence, regarding the extent to which the creation of the covered walkway within the south façade and portion of the



Gymnasium built form, will thus solve the concerns over the width of the South Driveway as it intersects with the entrance/exit from the South Parking Lot. The Tribunal was advised that the “buttresses” depicted in the photographs are not structural and will be removed, thus allowing for the widening and improvement of the South Driveway as it runs south of the Gymnasium.

[26] This was a concern about which Mr. Kivistik testified, and which was based on the assumption that the South Driveway was severely constrained by the distance between the south edge of the buttresses and the south boundary of the Site. Mr. Kivistik was, to be fair, not aware that the design of the south side of the Gymnasium had been reconfigured and his measurements, and his conclusion that the area south of the Gymnasium could not accommodate the full South Driveway width required to safely accommodate vehicle traffic were predicated on this misapprehension of the proposed specifications for this area of the Site.

[27] The Tribunal accepts the evidence provided by Ms. Menzies on behalf of Dalron as to the proposed modifications to the south façade, removing the buttresses and widening the area for the South Driveway, as well as the proposed street level pedestrian walkway to be carved out of the south side, main floor of the Gymnasium. The Tribunal has considered and is satisfied, that this redesign will allow for the proposed modifications to be implemented and will allow for the South Driveway to be of sufficient width. With the removal of the buttresses, and the creation of the walkway, the most significant concerns expressed by Mr. Kivistik regarding (a) the blind spot at the entrance to the small parking lot; (b) the width of the South Driveway; and (c) the ability to accommodate curbs, fencing and guardrails to secure and contain vehicular traffic on the South Driveway, will be eliminated or sufficiently mitigated.

[28] The Tribunal has carefully considered the evidence of Mr. Kivistik including his opinion that a full steel guardrail should be installed to safely buffer the South Roadway from the Appellant’s Lot instead of just a board-on-board fence for privacy and

aesthetics (which is addressed below), and accepts this to be a reasonable requirement. Ms. Menzies, in her testimony and inquiry of the Panel, indicated that the stipulated requirement for the installation of the guard rail would be appropriate. The Tribunal is satisfied, upon the whole of the evidence of Ms. Menzies and Mr. Rukholm that the other adequate design features, as implemented through the Site Plan Agreement, are sufficient to address the concerns raised by Mr. Squires if the steel guardrail is installed along the full length of the South Roadway.

[29] Ms. Menzies opines that the specifics relating to the final grade of the South Driveway, the width of the roadway, the landscape buffers and wooden privacy fencing to be installed on the south boundary, signage, and other detailed design elements will be adequately considered and addressed in the final Site Plan processes.

[30] As indicated, the Tribunal accepts the nature of the concerns expressed by Mr. Squires, but upon the totality of the evidence before the Tribunal, with the features and design of the Development as it relates to the South Driveway (including issues of gradient, curbing, lane width, signage and other traffic and safety matters) to be further addressed in the Site Plan process, the Tribunal accepts the planning opinions of Ms. Menzies and is satisfied that the Appellant's concerns are adequately addressed with the amendments and additional safety features.

[31] With such measures in place, the Tribunal is unable to conclude that the ZBLA, as it has been enacted by Council, and the Concept plan, do not represent good planning. To the contrary the uncontroverted planning evidence from Ms. Menzies is that the revised design and Site Plan, and the proposed use of the Site, which has been subject to extensive scrutiny, public consultation and review, is appropriate. Mr. Kivistik was quite forthright in indicating that he did not challenge this evidence relating to the proposed Development as a whole.

[32] The Tribunal also accept Ms. Menzies opinion evidence, and the submission of the Applicant, that moving the South Driveway, as suggested by the Appellant and Mr. Kivistik, would require an entirely new concept, substantially different from the form of the concept that has already undergone scrutiny through the public consultation process. Such a significant departure from the approved Development would ignore the established planning processes already undertaken by the City that led to the final form of the Development, which were sensitive to the City's Planning policies and development processes and the public consultation process. The Tribunal accepts the submission that leaving the concept as it is provides an appropriate balance between the policies of intensification and the need to provide a quality residence complex for seniors in the community, and thus fill in the gaps identified in the OP.

[33] The Tribunal is satisfied that the proposed Development and the ZBL are sensitive to a number of planning objectives and, with the safety concerns addressed, represent good planning.

[34] Ms. Menzies has reviewed the applicable policies within the PPS and opines that the ZBL that will enable the Development is consistent with those policies and that any issues relating to health and safety can be addressed through the Site Plan processes in s. 41 of the *Planning Act*. Although there are few of the specific policies in the Northern Ontario Growth Plan that are of direct application, Ms. Menzies indicates that in her opinion, the ZBL conforms to that plan and in particular those relating to residential development.

[35] With respect to the City's OP, Ms. Menzies, upon a comprehensive overview of the applicable policies relating to the Development, including those of intensification, concludes that the Development, as it is close to transit and arterial roads, is compatible with the neighbourhood, is without any adverse traffic or parking impacts, promotes intensification, and represents a good adaptive reuse of the former school by allowing for appropriate residential development in an appropriate density in the Living Area

designation. In addition to conformity with the intensification and housing policies of the OP, Ms. Menzies confirms that the Development meets all of the urban design objectives of the OP, and with the safety and access issues to be addressed in the Site Plan approval, the Development will contribute a quality addition of appropriate housing and concludes that the ZBL conforms, in all respects with the City's OP. As well, Ms. Menzies had testified that the Development, as permitted through the ZBL complies with the provisions of the City's comprehensive ZBL as it applies to the Development.

[36] Ms. Menzies' opinions relied upon those uncontroverted opinions relating to traffic, as provided to the Tribunal by Mr. Rukholm, which the Tribunal accepts in their entirety. Mr. Rukholm reviewed the studies undertaken in the review processes and concluded that all concerns relating to traffic had been addressed. This evidence was not effectively affected by cross-examination.

[37] Upon all of the evidence, the Tribunal accordingly accepts the planning opinions provided by Ms. Menzies and finds that the ZBL is consistent with the PPS, conforms to the Northern Ontario Growth Plan and the policies of the City's OP, and complies with the provisions of the City's comprehensive ZBL where, and as, it is applicable to this Development.

[38] The Tribunal accordingly confirms the form of the ZBL as it was passed by Council but allows the appeal, in part, only to the extent that additional modifications should be added to paragraph 2 of the ZBL in accordance with this Decision. The additional modifications will provide for the addition of the steel guardrail along the length of the Appellant's property, the construction of the board-to-board privacy fence, and the required alteration of the Gymnasium adding the covered walkway along the length of the south façade at the ground level.

**ORDER**

[39] The Tribunal Orders that the appeal against By-law No. 2018-9Z of the City of Greater Sudbury is allowed in part and the Tribunal directs the City to amend By-law No. 2018-9Z as set out in Attachment 1 to this Order by adding the following additional modifications to paragraph 2 of that By-law:

- (a) A steel guardrail, constructed in manner consistent with applicable provincial standards to prevent vehicles leaving the travelled portion of the South Driveway, adjacent to the slope, shall be constructed along the south boundary of the South Driveway as it extends to the north and the length of the Appellant's property, being Part 1 on Plan 53R-3835, PIN Parcel 02124-0158;
- (b) A board-to-board fence of quality materials, at the maximum height permitted by the City's By-law(s) relating to fences shall be constructed along the length of the north boundary of Part 1 on Plan 53R-3835, PIN Parcel 02124-0158; and
- (c) The final form of existing gymnasium located shall be designed and constructed so as to allow for the creation of a covered walkway, within the first floor of the southern portion of the gymnasium built-form, along its entire length, to be integrated into the final design of the pedestrian and vehicular portions of the driveway running along the southerly interior side lot line abutting Part 1 on Plan 53R-3835 and continuing along the entire length of the south façade and portion of gymnasium, with final specifics to be determined during the Site Plan approval process.

[40] In all other respects, the appeal is dismissed.

*“David L. Lanthier”*

DAVID L. LANTHIER  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

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By-law 2018-9Z

**A By-law of the City of Greater Sudbury  
to Amend By-law 2010-100Z being the  
Comprehensive Zoning By-law for the City of Greater Sudbury**

**Whereas** the Council of the City of Greater Sudbury deems it desirable to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury;

**Now therefore the Council of the City of Greater Sudbury hereby enacts as follows:**

1.-(1) That By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury, Schedule "A" attached thereto, be and the same is hereby amended by changing the zoning classification of the following lands from "I", Institutional to "R4(9)", High Density Residential Special.

(2) Property Description: PIN 02124-0103  
Part 1, Plan SR-713  
Part of Lot 2, Concession 5  
Township of McKim, City of Greater Sudbury

2. That the following paragraph be added to Part 11, Section 1, Subsection (12):

**(i) R4(9) (Conversion of former St. Raphael School)**

**McKim Township Maps Lot 2, Con 5; Lot 1, Con 5**

Notwithstanding any other provision hereof to the contrary, within any area designated R4(9) on the *Zone Maps*, all provisions of this by-law applicable to the "R4", High Density Residential zone shall apply subject to the following modifications:

- (i) The only permitted *uses* shall be a *multiple dwelling*, a *retirement home*, and related *accessory uses*;
- (ii) The development shall not exceed 120 *dwelling units* or 150 *guest rooms* or a combination thereof. The formula for determining capacity shall be on the basis of 1.25 *guest rooms* being the equivalent of 1 *dwelling unit*;
- (iii) The location of the *existing building* shall be permitted;
- (iv) The maximum *building height* of the *existing building* shall not exceed two (2) *storeys*;
- (v) New *buildings* are permitted in accordance with the following provisions:

- a. The minimum *setback* from the southerly *interior side lot line abutting* Lots 8 to 11, Plan M-382 shall be 80 metres;
  - b. The maximum *building height* shall be six (6) *storeys*;
- (vi) Related *accessory uses* are permitted in conjunction with a *retirement home* as follows:
- a. A *medical office* with a maximum *gross floor area* of 400 m<sup>2</sup>;
  - b. Not more than one *personal service shop* and one *convenience store*, not exceeding 150 m<sup>2</sup> in total *net floor area*, *accessory* to, completely enclosed within and *accessible* only from inside the *retirement home*;
- (vii) A *planting strip* with a minimum depth of 1.8 metres shall be provided along the southerly *interior side lot line abutting* Part 1, Plan 53R-3835;
- (viii) A natural vegetative buffer shall be maintained 10 metres from the southerly, westerly and easterly *interior side lot lines abutting* the *rear yards* of Lots 5 and 6, Plan M-1116, Lots 8 to 14, 16 and 17, Plan M-382, and Part 1, Plan 53R-3835;
- (ix) A natural vegetative buffer shall be maintained with a minimum width of 20 metres from the northerly *rear lot line*.

3 Any person or public body may appeal the passage of this By-law to the Ontario Municipal Board by filing with the City Clerk:

- (i) a Notice of Appeal setting out the objection to the By-law,
- (ii) reasons in support of the objection, and
- (iii) the fee prescribed under the *Ontario Municipal Board Act*,

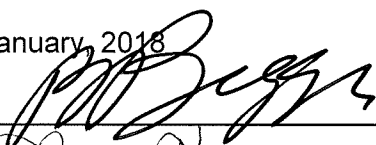
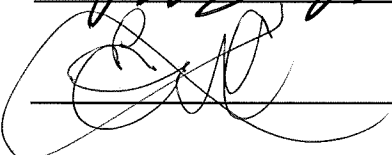
within 20 days of the giving of notice of passage of the By-law by the City Clerk.

If these materials and fees have not been filed with the City Clerk within this period, this By-law shall be deemed to have come into force on the day it was passed.

If these materials have been received within that time, this By-law shall not come into force until the appeal has been disposed of by the Ontario Municipal Board.

4. This By-law is in conformity with the City of Greater Sudbury Official Plan as amended.

**Read and Passed in Open Council** this 9<sup>th</sup> day of January, 2018

  
 \_\_\_\_\_ Mayor  
  
 \_\_\_\_\_ Clerk



