

## For Information Only

**Local Planning Appeal Tribunal Decision – Case PL190418 – Applications for Consent B0023/2019, B0024/2019, and B0025/2019– (0 Highway 69 North, Hanmer)**

Presented To: Planning Committee

Presented: Wednesday, May 20, 2020

Report Date: Friday, Mar 06, 2020

Type: Correspondence for Information Only

File Number: B0023/2019, B0024/2019 & B0025/2019

## Resolution

For Information Only

## Relationship to the Strategic Plan / Health Impact Assessment

The applications for Consent are operational matters under the Planning Act to which the City is responding.

## Report Summary

This report provides correspondence concerning Local Planning Appeal Tribunal File No. PL180129 – Appeal of Consent Decisions B0023/2019, B0024/2019, and B0025/2019 (0 Highway 90 N, Hanmer) for information. The above noted applications were submitted concurrently and sought to create three new urban residential lots fronting Highway #69 North in Hanmer. The lands are designated Living Area 1 in the Official Plan and zoned “R1-5”, Low Density Residential One under By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury. The reason for the appeal was the denial of the applications which were deemed by the Consent Official not to be in conformity with the Official Plan and not consistent with the Provincial Policy Statement. The decision to deny the applications was upheld by LPAT.

## Financial Implications

There are no financial implications associated with this report

### Signed By

#### Report Prepared By

Alex Singbush  
Manager of Development Approvals  
*Digitally Signed Mar 6, 20*

#### Manager Review

Alex Singbush  
Manager of Development Approvals  
*Digitally Signed Mar 6, 20*

#### Recommended by the Division

Jason Ferrigan  
Director of Planning Services  
*Digitally Signed Mar 9, 20*

#### Financial Implications

Apryl Lukezic  
Co-ordinator of Budgets  
*Digitally Signed Mar 16, 20*

#### Recommended by the Department

Tony Cecutti  
General Manager of Growth and Infrastructure  
*Digitally Signed Mar 17, 20*

#### Recommended by the C.A.O.

Ed Archer  
Chief Administrative Officer  
*Digitally Signed May 6, 20*



**Date: February 27, 2020**

## **STAFF REPORT**

### **Background:**

This update concerns Consent Files B0023/2019, B0024/2019, and B0025/2019 which were submitted concurrently and sought to create three new urban residential lots fronting Highway #69 North in Hanmer.

The lands are designated Living Area 1 in the Official Plan and zoned "R1-5", Low Density Residential One under By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury. This portion of Highway #69 North is also designated as a Primary Arterial on Schedule 6 – Transportation Network in the City's Official Plan.

Development Approvals staff advised that the proposed severed and retained lands represent a form of low density residential development that is best directed away from Primary Arterial roads in the City. Further, staff commented that the resulting lot fabric and residential density proposed did not conform to the policies identified in the City's Official Plan and that the lands are best suited to be developed with minimal driveway entrances onto Highway #69 North and at a higher residential density and built-form.

The City's Consent Official made a decision to not approve the applications on August 6, 2019.

### **Appeal:**

The decisions of the Consent Official were appealed to the Local Planning Appeal Tribunal on August 28, 2019 by the property owner.

The appellant objected to the denial on the basis that the property had special circumstances to be taken into consideration and that the proposals were, in their opinion, in conformance with the Official Plan and the Provincial Policy Statement.

A one-day hearing before the Tribunal was conducted on February 11, 2020. The Tribunal member issued an oral decision as follows:

### **CONCLUSION**

[19] Upon the findings made, the uncontested expert planning evidence of Mr. Ferguson and expert engineering evidence regarding roads of Mr. Shelsted, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that the proposed consent does not have appropriate regard for the criteria set out in s. 51(24) of the Act, does not conform to the policies of the City's OP and does not represent good planning in the public interest.

### **ORDER**

[20] The Tribunal orders that the appeal is dismissed and the provisional consent is not to be given."

### **Summary:**

A copy of the Tribunal order is attached for review.

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



**ISSUE DATE:** February 21, 2020

**CASE NO(S):**

PL190418

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 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	749459 Ontario Ltd. o/a Katmic Construction
Subject:	Consent
Property Address/Description:	0 Highway 69 North
Municipality:	City of Greater Sudbury
Municipal File No.:	B0023/2019
LPAT Case No.:	PL190418
LPAT File No.:	PL190418
LPAT Case Name:	749459 Ontario Ltd v. Greater Sudbury (City)

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	749459 Ontario Ltd. o/a Katmic Construction
Subject:	Consent
Property Address/Description:	0 Highway 69 North
Municipality:	City of Greater Sudbury
Municipal File No.:	B0024/2019
LPAT Case No.:	PL190418
LPAT File No.:	PL190419

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	749459 Ontario Ltd. o/a Katmic Construction
Subject:	Consent
Property Address/Description:	0 Highway 69 North
Municipality:	City of Greater Sudbury
Municipal File No.:	B0025/2019
LPAT Case No.:	PL190418
LPAT File No.:	PL190420

**Heard:** February 11, 2020 in Sudbury, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

749459 Ontario Ltd.  
o/a Katmic Construction

Matthew Brulé

City of Greater Sudbury

Kelly Gravelle\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON  
FEBRUARY 11, 2020 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This was a hearing of an appeal to the Local Planning Appeal Tribunal (the “Tribunal”) pursuant to s. 53(19) of the *Planning Act* (the “Act”) by 749459 Ontario Ltd. o/a Katmic Construction (the “Applicant/Appellant”) of the decision of the City of Greater Sudbury’s (the “City”) Consent Official to deny an application for consent to create three new lots in addition to the retained lot for lands known municipally as 0 Highway 69 North, in the community of Hanmer (the “subject property”). Locally Highway 69 is known as, and was referred to during the hearing as, Municipal Road 80 (“MR 80”).

[2] The subject property is a vacant parcel of land with approximately 69 metres (“m”) of frontage on MR 80, and is approximately 61 m in depth. There are two existing curbs cuts/driveways from the subject property to MR 80, one with a width of approximately 6 m and the second with a width of approximately 12 m.

[3] The lands abutting the subject property to the west have been developed as commercial, the lands abutting the south lot line are low density residential, the lands abutting the subject land to the east are residential, and the lands across MR 80 from the subject property have been developed as medium density residential.

[4] The proposal is to sever the west portion of the subject property into three new lots, two with 17.5 m frontage and one with 16 m of frontage and all three new lots plus the retained lot having a depth of 60.9 m. The retained lot would also have 17.5 m of frontage. Access/egress from each of the four lots is proposed to be taken from the two existing driveway entrances on the subject property. Each of the four lots is intended to be improved with a side-by-side duplex together with and subject to mutual rights of way/easements.

[5] The Applicant/Appellant provided lay evidence in support of the proposed consent application.

[6] Ms. Gravelle called two witnesses to provide expert opinion evidence supporting the decision of the City's Consent Official to deny the application for consent:

- Following submissions from the parties, Glen Ferguson, Senior Planner in the City's Development Approvals Section, was qualified by the Tribunal to provide expert opinion evidence in the field of land use planning.
- Following submissions from the parties, David Shelsted, Director of Engineering Services/Director of Road and Transportation Services, was qualified by the Tribunal to provide expert opinion evidence in the field of engineering with respect to roads.

[7] When considering an application for consent under the Act, the Tribunal must ensure, among other things, that its decision has regard for matters of provincial interest including the criteria set out in s. 51(24) of the Act and whether the proposal represents good planning.

[8] The Applicant/Appellant testified that if the proposed lots are approved, he intends to build single storey, single detached dwelling side-by-side with an accessory dwelling unit on each of the lots. He testified that he intends to rent the primary and accessory units to seniors. He opined that there is an insufficient supply of housing

designed for seniors to meet the local demand.

[9] The Applicant/Appellant advised the Tribunal that he had reviewed that City's Official Plan ("OP") and believed that his proposal conformed with the OP. He noted that low density housing, including single detached dwellings, is permitted on the subject property. The City is asking for more density on the subject property but the Applicant/Appellant is of the opinion that there are too many higher density developments in Hanmer. It was his opinion that his proposal for single detached dwellings with accessory units is what the community needs.

[10] The Applicant/Appellant suggested that there would be no impacts from the proposed developments on the surrounding community. He noted that the City has concerns with traffic impacts but argued that the addition of eight units, particularly when rented to seniors, would add very little traffic to MR 80. He further noted that there had been no objections from any neighbours to his proposal. The Applicant/Appellant further noted that the proposal maintains the character of the existing low density housing abutting the subject property to the south.

[11] Mr. Ferguson advised the Tribunal that City staff had recommended that the application be refused. He testified that the subject property is designated Living Area 1 in the City's OP which permits low and medium density housing. He referred the Tribunal to Policy 3.2.1.1 of the OP which states that "low density development permits single detached dwellings, semi-detached dwellings, duplexes and townhouses to a maximum density of 36 units per hectare. In order to maintain existing neighbourhood character, the Zoning By-law may establish lower densities in certain areas of the city." Mr. Ferguson opined however, that conformity to the OP is not limited to one policy, but rather must be considered in the context of the OP as a whole.

[12] Mr. Ferguson directed the Tribunal to policy 3.2.1.4 as another key policy which said must be considered in this matter, "Medium and high density housing should be located on sites in close proximity to Arterial Roads, public transit, main employment and commercial areas, open space areas, and community/recreation services."

[13] Mr. Ferguson testified that MR 80 is a Primary Arterial Road (Major Highway) and directed the Tribunal to Table 2 in section 11 of the OP.

[14] In his testimony Mr. Shelsted confirmed that MR 80 is a primary regional road with a posted speed limit in the vicinity of the subject property of 70 kilometres per hour ("kph"). He noted that the MR 80 is a five lane road, two lanes in each direction with a centre turning lane, and a design speed of 80 to 90 kph. Mr. Shelsted further advised that MR 80 is designed to handle traffic volumes of up to 50,000 vehicles per day and current traffic volumes are below this.

[15] Mr. Shelsted testified that the purpose of a Primary Arterial Road is to move high volumes of people and goods at high speeds. He referred to access points, such as driveways, as contact points, which he described as potential points of conflict. The more contact points, and the closer those contact points are together, the greater the potential for conflict. As a result, the goal is to minimize the number of points of contact. Mr. Shelsted opined that, although they currently exist, the two driveway access/egress points for the subject property are not desirable, and the City would recommend only one contact point to serve the property.

[16] Mr. Ferguson testified that the OP policies support medium density development (up to 90 units per hectare ("uph")) along arterial roads outside the community of Sudbury (high density housing is only permitted within the community of Sudbury). He noted that the proposed consent application would result in a maximum density of 18 uph which is only half the maximum density for low density residential. Mr. Ferguson opined that this density is simply not sufficient for development along an arterial road. He further opined that low density is not consistent with the character of the community. It was his opinion that the subject lands were part of the community on either side of the MR 80 which was evolving to medium density residential development and commercial uses. The low density neighbourhood to the south of the subject property that the Applicant/Appellant referred to in his evidence, is not of similar character given that it is an interior residential neighbourhood not located on an Primary Arterial Road.

[17] Mr. Shelsted agreed with the evidence of Mr. Ferguson. In his opinion it is appropriate to have higher density developments located along Primary Arterial Roads with few and controlled access points.

[18] Mr. Ferguson further testified that the subject lands are located in close proximity to a nearby parks, an arena, and other community services. It was Mr. Ferguson's opinion that the proposal represents underdevelopment of the subject property. Based on the reasons provided in his testimony, Mr. Ferguson summarized his opinion by stating that the proposed development of the subject property is not in the public interest; does not conform to the official plan; is not suitable for the purposes for which it is to be subdivided; does not propose a number, width, and location of access points to MR 80; and, would result in lots with dimensions not appropriate for the subject lands. Mr. Ferguson opined that the proposed consent does not represent good planning.

## **CONCLUSION**

[19] Upon the findings made, the uncontested expert planning evidence of Mr. Ferguson and expert engineering evidence regarding roads of Mr. Shelsted, and the whole of the evidence inclusive of the documentary record, the Tribunal finds that the proposed consent does not have appropriate regard for the criteria set out in s. 51(24) of the Act, does not conform to the policies of the City's OP and does not represent good planning in the public interest.

## **ORDER**

[20] The Tribunal orders that the appeal is dismissed and the provisional consent is not to be given.

*"John Douglas"*

JOHN DOUGLAS  
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**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
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