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Counsel:
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Please refer to file no. 70/441

March 27th, 1980

Gordon Woods Homeowners' Association
c/o Mr. Donald Stewart
2115 Autumn Breeze Drive
Mississauga, Ontario
L5B 1R3

Dear Sir:

Re: Ontario Municipal Board Decision
- Lawrie Appeal

I am pleased to enclose the Decision of the Ontario Municipal Board denying the appeal of Mr. Lawrie, and upholding the decision of the Land Division Committee to refuse the severances requested.

As you are no doubt aware, there is a statutory appeal period of 28 days in which the matter might be appealed to the Lieutenant-Governor in Council. I suspect from a comment Mr. Weir made to me at the conclusion of the hearing that his client might well decide to pursue this route. I will, however, advise you if or when I receive a copy of that Petition, so that the Association might consider filing a Petition-in-Reply, or instructing me to do so on its behalf.

Should you have any questions regarding the enclosed, please do not hesitate to call.

Yours very truly,



N. Jane Pepino

NJP:vs
Enc.

→ c.c. Mr. B. Kuhnert
c.c. Dr. and Mrs. Reid
c.c. Mr. A. G. Sellers
c.c. Mr. Kenneth Post

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March 27th, 1980

Mr. A. G. Sellers
Cedarvale Tree Services
1480 St. Clair Avenue West
Toronto, Ontario

Dear Sir:

Re: Gordon Woods Homeowners'
Association - Ontario Municipal
Board Hearing

I am pleased to enclose the decision of the Ontario Municipal Board refusing the severances under appeal.

I would particularly draw your attention to the second full paragraph on page 5, in which the Board accepted your evidence over that of the landscape architects called by the appellant. The issue of trees was an important one, and I thank you for testifying at the hearing in this regard. Given your knowledge of, and experience with the problems to which the mature trees in the Gordon Woods area might fall victim, I would certainly hope members of the Association would draw on your expertise.

Again, thank you for your participation.

Yours very truly,



N. Jane Pepino

NJP:vs
Enc.

c.c. Mr. D. Stewart
→ c.c. Mr. B. Kuhnert
c.c. Dr. James M. Reid
c.c. Mr. Kenneth Post

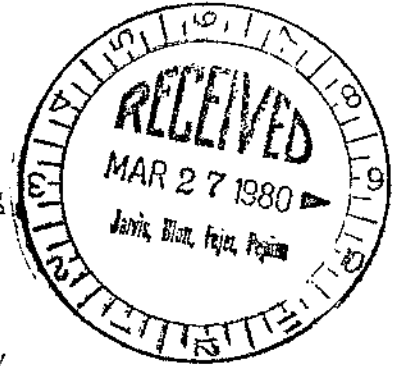


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Ontario Municipal Board

IN THE MATTER OF Section 42 of The Planning Act (R.S.O. 1970, c. 349) as amended,



- and -

IN THE MATTER OF an appeal by Geoffrey Stewart Moore from a decision of the Regional Municipality of Peel Land Division Committee

C O U N S E L :

- Gerald S. Swinkin - for The City of Mississauga
- N. Jane Pepino - for Gordon Woods Homeowners Association Inc.
- M. E. Weir, Q.C. - for Robert Lawrie
- G. McQ. Bartlett - for The Regional Municipality of Peel

DECISION OF THE BOARD delivered by W. T. SHRIVES

This appeal was commenced on the 30th day of July, 1979 but due to a lack of time, the matter was adjourned. The hearing continued on the 12th day of March, 1980 and after hearing all of the evidence and argument, the decision was reserved. I shall now proceed to hand down my decision together with the reasons for reaching that decision.

An application was made to the Land Division Committee of the Regional Municipality of Peel dated the 30th day of November, 1978 by one Geoffrey Stewart Moore seeking to subdivide part of Lot 17, Registered Plan E20 into two separate lots. The name of the applicants' solicitor on this application is shown as Robert G. Lawrie and the evidence indicates that Mr. Lawrie became the owner of the subject property in December 1978 which predates the decision of the Land Division Committee on the 11th of January 1979. In any event, Mr. Lawrie launched the appeal which is the subject of this hearing.

The subject lot which is municipally known as 2219 Parker Drive in the City of Mississauga is a corner lot with frontage on Parker Drive and

Isabella Avenue. It is the northwest corner of a block bounded by Parker Drive, Isabella Avenue, Gordon Drive and Harborn Trail. The many photographs which were filed at the hearing as exhibits show quite clearly that all of the lots with perhaps one exception are very large, well treed and the houses are set back from the road at distances varying from 75 feet to 100 feet. There is no doubt in my mind that they possess the characteristics of estate lots and differ greatly from the urban lots of today. The area has been developed for some years and in fact, the lots all are serviced by septic tanks with water being the only service available.

The present land use places the whole block in an R1, zone which sets out certain requirements for lots with full services, those with just water and those with no services. The evidence indicated that none of the lots to which I have referred have ever been subdivided and I shall detail some of this data later in this decision.

Mr. Lawrie, who is a lawyer, stated that he and his family had occupied the subject house for a period of a few months but has relocated his family in the United States because he is temporarily carrying on his legal practice in New York City. He pointed out that he has leased the subject property and that he intends to return to Canada. It is his intention if this appeal is successful to sell the existing house and build a new house on the lot which this application seeks to create.

The present lot has a frontage on Parker Drive of 110 feet more or less and frontage on Isabella of about 248 feet more or less with a total area of something over 25,000 square feet. The application seeks to sever the rear portion of the subject property, creating a lot with frontage on Isabella Avenue of 76 feet of an irregular shape and an area of about 10,000 square feet. Under normal circumstances, such a lot would be contrary to the existing by-law because sewers are not available and as such, would require a frontage of 100 feet and a total lot area of 12,500 square feet. The evidence is, however, that because a new subdivision of some 12 lots was created on a cul-de-sac on the north side of Isabella Avenue that it is possible for the subject property to hook into this system.

A great deal of evidence was adduced with respect to this subdivision which is known locally as Taylor's Orchard. It appears that final approval to the plan of subdivision was obtained in 1977 and that construction proceeded during 1978 and 1979 and it is now fully developed. The land was formerly an apple orchard and has been developed on R1, standards under that part of the by-law where all services are available. The photographs which were filed of this development indicate a development of quite a different character than the development on the south side of Isabella Avenue.

Mr. Weir called a qualified planning witness in support of the appeal. This witness felt that the local residents resisted the installation of sewers to prevent smaller lots. It was also her opinion that because of the development in the Taylor's Orchard subdivision that a change had been introduced into the area and that this proposal was in keeping with that development. She also felt that because the proposed lot would face the entrance into this subdivision that it gave weight to the proposed severance and took the subject lot out of the neighbourhood. The planner admitted, however, in cross-examination that Taylor's Orchard was new development and not redevelopment.

The subject lot like all the lots on the south side of Isabella Avenue contains many trees and so the removal or destruction of these trees could be an issue. A landscape architect was called in support of the appellant's case. As a result of a site inspection, the witness prepared a diagram showing the approximate location of the existing tree cover on the proposed lot. She stated that seven of the mature trees would have to be removed from the site to permit the construction of the house. The witness Towers expressed the opinion that because of the height of the existing trees and the fact that these woodlot trees have little or no foliage at the bottom, they were out of scale. She also expressed certain opinions with respect to root systems of the remaining trees which will be dealt with later in this decision.

Mr. Magi, a principal planner with the staff of the City of Mississauga, gave evidence in opposition to the appeal. The decision up to this point has dealt mainly with the relationship between the subject lot and

the immediate large block in which it is located. The Gordon Woods area, however, encompasses a much larger area, parts of which are exactly similar in character to the block already dealt with. There are, in fact, several lots on the east side of Parker Drive and the west side of Gordon Drive which are actually larger in frontage and area than the lots already described. Mr. Magi pointed out that plan E20 dated back to May, 1920. He described the area as well established, mature and heavily treed with an overall appearance of country estates. As a result of a study he did on the area, he found that the average area of the lots was 23,200 square feet. A special study of the 13 lots fronting on Isabella Avenue revealed that the average frontage was 96.3 feet and the average area was 19,500 square feet.

Mr. Magi pointed out that the houses in the new subdivision in Taylor's Orchard do not front on Isabella Avenue and the flankage of the two houses at the entrance to the cul-de-sac are covered by existing trees. Therefore, this new development does not have any effect on Isabella. He also introduced a document (Exhibit 11) which is an extract from the new Official Plan of the municipality and is now before the Minister for approval. Section 5.18.6.5(b) of this document states in part as follows:

"Subdivision of large residential lots into residential lots of less than 24 metres (80 feet) frontage will not be permitted if it would be detrimental to the existing character of the area."

Another point which was raised by the witness Magi was that 160 residents of the area have petitioned the Council to enact some type of preservation by-law which will inhibit the subdivision of existing lots. They propose that any new lots created have a frontage of 100 feet and an area of 12,000 square feet. At this point the planning staff are preparing a study on the matter and it is anticipated that a public meeting will be held in June of this year to examine the proposal.

Mr. Magi was questioned at some length by Mr. Weir about the Taylor's Orchard subdivision as well as another subdivision to the west of

Gordon Drive known as the Autumn Breeze subdivision. Another matter which Mr. Weir raised with this witness was a recent application on Gordon Drive which created two new lots.

Mr. Pepino called four ratepayers from the area as well as an arbourist who gave evidence on trees.

I am satisfied that the evidence which Mr. Sellers gave the Board with respect to the trees had to be accepted over the evidence of Kellie Towers because of the qualifications of the former and his long experience in this field. It was simply his opinion that to remove these mature trees on the proposed lot and the excavations which would be required for the construction of a house would spell the end of most of the mature trees on the lot.

Mr. Kenneth Post, the President of the Gordon Woods Homeowners Association gave evidence and stated that the organization opposed the severance being granted. He stated that the association normally does not take a position unless a neighbouring member complains. It is his opinion that applications such as this one may be "the thin edge of the wedge" and could lead to the redevelopment of the area into smaller lots. He also explained the action which the association took to certain matters raised by Mr. Weir. He indicated that as a result of pressure, the owner of the land on Gordon Drive changed his plans from seeking three lots to two lots and the size of the subdivision being proposed for the Premium Way area had been reduced to larger lots. In addition to Mr. Post, another ratepayer who is a past president of the association, Mr. Stewart, confirmed the opinions expressed by Mr. Post. I am satisfied that both of these gentlemen felt that the plans for both the Taylor's Orchard development and the one at Autumn Breezes were too far advanced for the association to take a strong position. It is true that the association was aware of the applications before the Committee of Adjustment but because of the nature of the minor variances asked for, to oppose them would have been merely a delaying tactic.

Both of the neighbours with lots which adjoin the subject property appeared to oppose the application. Mr. Kuhnert lives immediately east of

the subject lot on Isabella Avenue. He too presented the Board with a series of photographs depicting the existing development in the immediate area. He pointed out that because his own home is set back 70 to 80 feet from the street line that the proposed new house would be well forward of his home. In fact, it would be so far forward that he would be in the rear of the house. Mrs. Reid lives in the house which is the first south on Parker Drive. She stated that a new house would block an open view which she now has from her kitchen window into the existing back yard of the subject. She also expressed the opinion that the privacy now enjoyed on their rear yard patios could be interfered with.

Mr. Weir both in the presentation of his case and in his argument relied very heavily on the new development which has taken place, namely the Taylor's Orchard and Autumn Breezes subdivisions as an indication that the character of the neighbourhood has changed. The ratepayers on the other hand feel that although this development is located within the geographical boundaries of the Gordon Woods area, it is entirely different to the character of the existing development. In this case, the Board agrees with the ratepayers and I do not feel that you can take a single lot from a block and say the character of that lot has changed as compared to the rest of the block.

I am also satisfied that the new Official Plan, although it is not yet approved by the Minister, clearly sets out the intention of the elected council with respect to lots such as the subject one. It is also in my opinion premature to consider subdividing existing lots until the present ongoing study regarding a preservation by-law is completed.

Mr. Weir also relies to some extent that what his client seeks is in accordance with the existing land use by-law and the Official Plan. This may be so but on the other hand, I do not feel that the introduction of a new house on a much smaller lot would be in keeping with the other houses on this block. I feel that my conclusion on this matter is reinforced by a decision of the Divisional Court delivered by Mr. Justice Liefv dated the 18th day of March, 1974, Re Westmount Park Road Homeowners' Association and J. M. Peebles Limited.

I am satisfied, having come to these conclusions that this appeal does not meet at least two of the tests which must be regarded under Section 33(4) of The Planning Act. These are subsections (a) and (b) in that the application does not conform with the adjacent plan of subdivision and also because it is premature nor is it in the public interest.

The Board must, therefore, deny the appeal. The decision of the Land Division Committee is sustained and the application is refused. In view of the decision reached, I do not intend to deal with the matter of levies.

DATED at Toronto, this 25th day of March, 1980.

W. T. SHRIVES
VICE-CHAIRMAN