Receieved 07/27/22

Tuesday, July 26, 2022

Dear COFA,

As residents of Seneca Heights, we request that this letter be submitted as part of the public record for file B014/21. Please ensure that this letter is included in the package given to Committee members so that they have ample time to review its contents. We feel that this submission has true merit and should be given significant weight when considering this application.

Residents object to the requested severance and are of the opinion that the proposal does not maintain the intent of the severance policies in VOP 2010 (Policy 9.1.2.3 a-b) and the consent criteria stipulated in Section 51(24c) of the *Planning Act*. We intend to demonstrate that this consent runs counter to and does not satisfy the above mentioned policy with regard to its purpose, intent and required criteria. This proposal is subject to Policy 9.1.2.3a-b, as it is the most directly applicable policy in VOP 2010 for severance applications in large lot neighbourhoods, such as Seneca Heights; *made even more significant* with its amendment by OPA 15 in 2018. Approval of this severance application will breach both the VOP 2010 and the *Planning Act*, significantly disrupting and changing forever the character of the Seneca Heights neighbourhood which has existed for more than 65 years.

This letter is in response to the Planning Department's comments, dated July 22, 2022, addressing resident's concerns regarding the application of Policy 9.1.2.3 a-b. We respectfully disagree with the Planning Department's interpretation of these policy provisions:

> "The adjournment of the file at the July 7th meeting allowed Development Planning staff time to discuss with the authors of the October 2021 comments to determine whether revised comments were needed in light of the policy concerns being raised. As a result of that discussion, it was determined that the policy concerns raised did not affect the opinion of the October 2021 comment writers as those concerns did not provide new information. **They arrived at this conclusion because the word 'should' rather than 'shall' is used across policies 9.1.2.3(a-c). The use of the word 'should' allows staff the flexibility to examine other factors when assessing conformity and compatibility whereas the word 'shall' would restrict the application of those policies to the exact wording in place.** As the neighbourhood's lot fabric is not uniform, the report writers decided to examine the configuration of other lots within the large lot neighbourhood as well as Zoning By-law 1-88 to assess conformity and compatibility. **The Zoning By-law is applicable law that implements the guiding policies of an Official Plan. Therefore zone category requirements carry substantial weight when assessing conformity and compatibility in contrast to an Official Plan's guiding policies.** The October 2021 writers concluded that the proposed lots were similar to other lots within the neighbourhood, and also complied with the R1 Zone provisions."
> ~ **bold sections** to be addressed in below comments

Policy 9.1.2.3

9.1.2.3. Within the Established Community Areas there are a number of established residential neighbourhoods that are characterized exclusively or predominantly by detached houses located on generally large lots with frontages exceeding 20 metres and/or by their historical, architectural or landscape value. These neighbourhoods are generally identified on Schedule 1B "Areas Subject to Policy 9.1.2.3 – Vaughan's Established Large Lot Neighbourhoods. Some of these established neighbourhoods, including estate lot neighbourhoods, are also characterized by their substantial rear, front and side yards, and by lot coverages that contribute to expansive amenity areas, which provide opportunities for attractive landscape development and streetscapes. These include neighbourhoods at or near the core of the founding communities of Thornhill, Concord, Kleinburg, Maple and Woodbridge, and may also be part of the respective Heritage Conservation Districts. For clarity, the policy text prevails over the mapping shown on Schedule 1B. In addition to those areas identified on Schedule 1B, this policy shall also apply to other areas where the subdivision and redevelopment of a large lot or multiple large lots would not respect and reinforce the elements identified in Policy 9.1.2.2. **In order to maintain the character of established, large-lot neighbourhoods the following policies shall apply to all developments within these areas (e.g., land severances**, zoning by-law amendments and minor variances), based on the current zoning, and guide the preparation of any future City-initiated area specific or comprehensive zoning by-laws affecting these areas.

a. **Lot frontage:** In the case of lot creation, new lots should be **equal to or exceed the frontages of the adjoining lots or the average of the frontage of the adjoining lots where they differ**;
b. **Lot area:** The area of new lots should be **consistent with the size of adjoining lots**;

Please find our comments below:

The above makes clear the purpose and intent of the policies which follow as well as the context for the interpretation of those policies, specifically that they shall apply in order to preserve the character of existing neighbourhoods. In other words, the criteria set out in 9.1.2.3 shall apply in determining this application and are not optional.

1) **VOP Policy 9.1.2.3 a-b ---Significantly, frontage and lot size are listed first and as such are the "primary determinants"** of the character of a community and therefore should be given special consideration over 9.1.2.3 (c) –Lot Configuration/Lotting Fabric (Urban Strategies Inc., slide deck presentation; consulting company commissioned by the city for OPA 15, 2018)

In the Oct. 28 revised staff report memo, from the Director of Planning, Nancy Tuckett:

The Planning Department, itself, identified Policy 9.1.2.3a-b as having specificity over 9.1.2.3.c --Lot Configuration (lotting fabric):

> "The compatibility policies contained in Section 9.1.2.3 (a-h) provides requirements for lot frontage, lot area, lot configuration, front, exterior and rear yards, dwelling types, building heights and massing, and lot coverage to maintain the character of existing large lot neighbourhoods. **Specifically, Sections 9.1.2.3.a and 9.1.2.3.b** identify that new lots should have lot frontages equal to or exceeding frontages of adjoining lots and that the area of new lots should be consistent in size with *adjacent lots" (*should read adjoining according to OPA 15, 2018)

And the Planning Department also acknowledges the *secondary* considerations in Policy 9.1.2.3 (c-h) in this statement: "The proposal satisfies the ***remaining*** policies of Section 9.1.2.3 (c-h)"

2) The Planning Department states that there is **"flexibility in examining other factors when assessing conformity and compatibility"**. For the reasons stated previously and hereafter, we respectfully, but strongly disagree. Policy 9.1.2.3 a-b is the **most applicable policy** in the VOP 2010 when assessing severance applications. The true purpose and intent of Policy 9.1.2.3 a-b is to provide the analytical framework necessary to apply the policy priority of protecting the character of established neighbourhoods such as Seneca Heights. As you will recall, this policy was amended and adopted with even more restrictive requirements in 2018, in order to protect neighbourhoods like ours.

Failure to apply the above policy to protect Seneca Heights from the first severance ever in over 65 years, essentially defeats and undermines the purpose of the VOP 2010, OPA 15, and the intent of these provisions.

In response to the Planning Department's comment regarding **"flexibility"**, we refer you to the following, a case in which the Local Planning Appeal Tribunal held that s.51(24) creates a statutory requirement to consider whether an application conforms to the official plan. **Flexibility in the application of policy does not extend to the point where the policy may be overlooked**. Rather, the application must "sufficiently [satisfy] the policy to be considered in conformity with it":

The Local Appeal Tribunal's findings in this regard**,** in *Leal v. Wellington (County), 2019,* Carswell Ont 6202 ("*Leal*"), are set out in Member S. Tousaw's analysis, at paragraphs 18 and 19, as follows:

18 What is clear from those cases is that conformity with an official plan is **not a discretionary exercise** in the sense that a policy can be applied or not applied in a particular case. Rather, the obligation of the Tribunal is to **assess an application against each applicable policy** to ascertain whether it sufficiently satisfies that policy or not. **Of relevance is the purpose and intent behind the policy and the manner in which the application responds to that intent.**

19 Section 51(24) of the Act instructs that "regard shall be had" to a variety of matters including "whether the plan [consent] conforms to the official plan." This section imposes a statutory obligation on the Tribunal to consider whether the application conforms to the official plan. To the extent that there may be some flexibility when having "regard" to an applicable policy, that flexibility is not whether the policy can be overlooked, but whether the application sufficiently satisfies the policy to be considered in conformity with it.

It can be argued that in the process of having "regard" to conformity with an official plan, **the Tribunal may refuse an application if found not to conform, after considering the "purpose and intent behind the policy" in the context of the entire plan, and whether "the application sufficiently satisfies the policy**."

3) In regards to the Planning staff report memo, dated Oct. 28, from Director Nancy Tuckett:

"Although the proposed severed and retained lands are smaller in lot frontage and lot area than adjacent lots, the proposal is **generally consistent** with Policy 9.1.2.3 (a-b)"

- We read the phrase "generally consistent" to mean that it is **not** consistent with Policy 9.1.2.3a-b, which set out ***specific requirements***
- The word "generally" is defined as: "…**without regard to particulars or exceptions**"

Policy 9.1.2.3b reads as follows:

Lot area: The area of new lots should be ***consistent*** with the size of adjoining lots

Policy 9.1.2.3b **does not** read as follows:
Lot area: The area of new lots should be ***generally consistent*** with the size of adjoining lots

In our opinion, **the severance application does not meet the more restrictive test of the amended (OPA 15), Policy 9.1.2.3 a-b**. To be "generally consistent" with *adjacent* lots does not conform to the applicable severance policy. That being, to be "consistent" with *adjoining* lots and to meet the specific criteria for lot frontage.

4) With respect, a **recommendation for approval of this application misses the main purpose of Policy 9.1.2.3a-b and specifically its amendment's intent in 2018**. It was amended to "respect and reinforce" the character of large lot areas and to provide a stricter test for severance applications such as B014/21.

This overall intent has been ignored in the "should" versus "shall" rationale set out in the Planning Department's correspondence on July 22 in response to residents' concerns regarding their application of Policy 9.1.2.3a-b. With regard to the distinction drawn by the Planning Department, with respect to the use of the word "should" versus "shall", in respect of the policy considerations, we provide the following dictionary definitions of the term "should":

- **Should** is "used when something is **likely and expected** to happen"
- **Should** is used interchangeably with **"ought to"**
- **Should** is "used to indicate **obligation, duty**, or **correctness**"

"It has been argued that residents should be able to rely upon a municipality's policies and it is a breach of trust when they are diminished." (Guide for Objecting to a Land Severance, Frank G. Oakes, Barrister & Solicitor, 2011)

5) The Planning Department stated in the July 22 correspondence to residents that:

"The Zoning By-law is applicable law that implements the guiding policies of an Official Plan. Therefore zone category requirements carry substantial weight when assessing conformity and compatibility in contrast to an Official Plan's guiding policies".

We disagree with the above statement for the following reasons:

The purpose of by-laws is to enforce the policies of the Official Plan, not the other way around. If by-laws do not conform to the policies of the Official Plan, they need to be eliminated or modified to conform with the Official Plan. In fact, this is *clearly stated on the Ontario government website* that "all bylaws, including zoning and related by-laws, must conform with the official plan" under Citizen's Guide to Land Use Planning (click link for evidence). It is therefore, in our view, a misstatement to say that a specific by-law would take precedence over the Official Plan.

In addition to the above, the *Planning Act* is the overarching provincial legislation that sets out the ground rules for land use in Ontario.

We respectfully disagree with the following statement in the staff report, from Director Nancy Tuckett, issued October 28:

"Accordingly, the Developmental Planning Department has no objection to the requested severance and is of the opinion that the proposal ***maintains the intent*** of the severance policies of VOP 2010, and the ***consent criteria stipulated in Section 51(24)*** **of the Planning Act**, R.S.O. 1990. cP.13"

With respect to the above, we note that this severance **does not comply with Ss. 51(24c), in that it does not conform to the official plan (i.e., Policy 9.1.2.3a-b).**

Section 53(12) of the *Planning Act*

53(12)…In determining whether provisional consent is to be given, the Committee shall have regard to the matters under subsection 51(24)…

Section 51(24) – Subdivision Criteria

(24) In considering a draft plan of subdivision, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

(a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

(b) whether the proposed subdivision is premature or in the public interest;

(c) **whether the plan conforms to the official plan** and adjacent plans of subdivision, if any;

(d) the suitability of the land for the purposes for which it is to be subdivided;

We note that, read together, s.53(12) and s.51(24), provide that regard for conformity to the official plan shall be had when determining consent applications. **The proposed severance application before the committee does not conform to the city's official plan, as the proposal is not consistent in lot size with adjoining lots. As well, it is not equal to or exceeding the frontages of the adjoining lots or the average of the frontage of the adjoining lots where they differ. This severance application neither complies with the VOP 2010 nor the *Planning Act*.**

6) **Character of the Neighbourhood is deserving of protection**

"Character of the neighbourhood will be a factor to be seriously considered by both the Committee and LPAT. New proposals should be compatible and respect the established physical character of the neighbourhood."

(Guide for Objecting a Land Severance, Frank Oakes, Barrister & Solicitor, 2011)

In addition to the proposal not conforming to the VOP 2010 or the Planning Act, the proposed severance is insensitive, will eventually disrupt the visual pattern of the streetscape, removes nine trees, and destabilizes the Seneca Heights neighbourhood.

It should be said that the primary factors often considered by people motivated to purchase in a particular large lot neighbourhood are the very qualities that are hard to quantify (e.g., spaciousness, streetscape, mature treeline, large lots, estate feeling etc..). "**Residents paid a higher purchase price and higher annual taxes for the enjoyment of such qualities that Seneca Heights offers and they are entitled to protection"** (Guide...., Oakes, 2011).

7) **Burden of Proof (Guide For Objecting to a Land Severance, Frank Oakes, Barrister and Solicitor, 2011)**

Legal Doctrine assumes the validity of the status quo and accordingly **places a heavier burden of proof upon the party seeking a change** (i.e., applicant). This means the applicant requesting a change **must demonstrate a stronger case** than the persons objecting (i.e., residents). At the hearing, the applicant must make out a prima facie case that the severance sought satisfies good planning principles which raises a presumption in their favour. The burden of proof then shifts to the objector(s) who must adduce evidence to rebut this presumption. "If at the conclusion of the hearing, the scales are evenly balanced, **the applicant must fail**. **For the proponent to succeed, their case must be stronger than yours** and if you feel it is no better, or worse, you may discreetly remind the Committee members of their obligation in this respect." (Guide…. Oakes, 2011)

Has the applicant demonstrated a stronger case than residents? Here are the facts:

-The applicant indicated in their written report that **"it is not appropriate to apply this policy", in reference to Policy 9.1.2.3b** that compares the two proposed lot sizes to adjoining lots. However, the **VOP preamble of 9.1.2.3. indicates it shall be applied** to protect the character of large lot neighbourhoods, as stated below:

> "**In order to maintain the character of established, large-lot neighbourhoods the following policies shall apply to all developments within these areas (e.g., land severances**,...)."

- On pg. 7 of the written report, the applicant states that the severance conforms to the VOP 2010 (Policy 9.1.2.3a-b); but then goes on to compare the proposed lot frontages and lot sizes to lots "located within the geographical neighbourhood" and to "adjacent and nearby" lots instead of the **required "adjoining" lots**

- On pg. 7 of the written report, the applicant used the unamended term "adjacent" instead of the **stricter** parameter of "adjoining" from OPA 15 (2018) in reference to 9.1.2.3.a-b

- In the report, the applicant compared proposed lots to neighbourhood lots that are not part of the original Seneca Heights (e.g., the Laterna subdivision on Arrowhead/Wigwoss cited by the applicant are outside of our immediate neighbourhood, and did not exist when Seneca Heights was originally developed in the 1950s; this area was added and dead ends opened to create this new neighbourhood, decades after Seneca Heights was established. As such, this is a distinct neighbourhood that is not comparable to the original lots in Seneca Heights)

- The applicant inaccurately identified the subdivision east of Seneca Heights as part of the large lot neighbourhood, when in reality the eastern boundary of the large lot subdivision area terminates east of 201 Wigwoss Drive (confirmed by Planning Department via email to resident)

We respectfully disagree with the applicant's opinion that "the consent application is consistent with Section 51(24) and 53 of the Planning Act," as it does not meet condition (c) conforming to the Official Plan. We respectfully disagree with the applicant's opinion that "the proposed severance is appropriate to approve and represents good planning" as they have not applied the most applicable severance VOP Policy 9.1.2.3 as it was ***intended***.

Therefore, for all the above reasons, we feel that the applicant has not made a stronger case than the residents.

We acknowledge that we are just ordinary citizens**,** though listened to politely, are generally seen as **"unqualified to give opinions on planning matters"** (Guide…, Oakes, 2011). However, it is our informed opinion, as ratepayers who have raised **legitimate concerns** throughout this process, that we have presented facts, backed with numbers, and policy rationale.

It is our position that approval of **this consent application must fail as it is does not comply with the intent of VOP 2010 Policy 9.1.2.3a-b to "respect and reinforce" the character of our long-established, large-lot neighbourhood. Furthermore, it does not meet the policy or legislative requirements for severance (i.e., *Planning Act,* s.53(12) and s.51(24c)).**

In short, the Planning Department approval recommendation is based, in our view, on an **incorrect interpretation of legislation and misapplication of policy**. In our opinion, this is no small matter. The proposed severance is **not in keeping with the Official Plan or the Planning Act** as it contemplates two new lots that do not meet the requirements for lot size or frontage. The intent of Policy 9.1.2.3 a-b is to protect against severances that do not meet its stringent requirements and to preserve the uniqueness of large lot neighbourhoods.

As the Planning Department is seeking to give Policy 9.1.2.3a-b less weight, we respectfully submit that this severance policy must be given the utmost importance in the assessment of this consent application, which is in line with the spirit and intent of the amendment of the VOP in 2018. Failing that, would defeat the intent of the Policy.

Lastly, the proposal is not consistent with the character of Seneca Heights and would be the first severance in this area in over 65 years. **For all the reasons stated in this submission, this consent application should be denied.**

Yours sincerely,
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