

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



ISSUE DATE: July 17, 2019

CASE NO(S): PL160967

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:	Emile Nabbout
Subject:	By-law No. 2016-67
Municipality:	Town of Tecumseh
OMB Case No.:	PL160967
OMB File No.:	PL160967
OMB Case Name:	Nabbout v. Tecumseh (Town)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Perry Burford
Subject:	Proposed Official Plan Amendment No. 14
Municipality:	Town of Tecumseh
OMB Case No.:	PL160967
OMB File No.:	PL161195

Heard: July 15, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel*/Representative

Perry Burford, Emile Nabbout, and
Judy Wellwood-Robson

Self-represented

Del Duca Industrial Park Ltd. (“Del

Vincent Del Duca

Duca”)

Town of Tecumseh (the “Town”)

Edwin Hooker*

MEMORANDUM OF ORAL DECISION DELIVERED BY S. JACOBS ON JULY 15, 2019 AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] This matter has returned to the Local Planning Appeal Tribunal (the “Tribunal”) as a result of a decision issued by its predecessor, the Ontario Municipal Board (the “Board”) on January 17, 2018 (the “2018 Decision”). In that decision, the Board allowed an appeal by Perry Burford and Emile Nabbout of the Town’s adoption of Official Plan Amendment No. 14 (the “OPA”) and passing of zoning by-law amendment No. 2016-67 (the “ZBA”). The OPA and ZBA allowed the development of an industrial business park at the northeast corner of the 8th Concession Road and North Talbot Road in Oldcastle Hamlet (the “subject property”). For ease of reference in the 2018 Decision, the Tribunal referred to the two appellants, Perry Burford, Emile Nabbout, and Judy Wellwood-Robson, a party in support of the appeals, as “FOOD”, to reflect their membership in an unincorporated residents’ group known as Friends of Old Oldcastle Development. That reference continues to be used in this decision.

[2] Based on the evidence and submissions during the November 2017 hearing of the appeals, this panel of the Board determined that the OPA and ZBA were inconsistent with the *Provincial Policy Statement, 2014* (the “PPS”). In arriving at that finding, the Board offered its observation that an alternative form of development, such as a type of mixed commercial-residential development, as suggested by FOOD to serve as a better transition between industrial and residential uses, could be consistent with the PPS.

[3] The Board therefore withheld its Order for a period of one year to allow the parties to explore an alternative proposal, should they so choose. The Board also indicated that the parties could request additional time to explore an alternative development if they found they were having productive discussions. For detailed

analysis and findings regarding the subject property and the earlier proposed development, the Tribunal refers to its 2018 Decision, which should be read as an accompaniment to this decision.

[4] In late 2018, the parties advised the Tribunal's Case Coordinator that they were involved in ongoing discussions regarding an alternative development proposal, and that they required additional time to explore this. The Tribunal ultimately granted the parties two six-month extensions, the latter expiring on July 17, 2019. When the parties requested the second extension, they advised the Tribunal's Case Coordinator that Town Council would be considering the proposed alternative development on June 25, 2019. Town Council issued unanimous approval of the proposed alternative development, and the Tribunal scheduled this telephone conference call ("TCC") with the parties to consider the proposed revised OPA and ZBA.

[5] In support of the revised OPA and ZBA, the Town submitted the affidavit of Brian Hillman, who was previously qualified during the November 2017 hearing to provide opinion evidence in land use planning. Mr. Hillman's affidavit, marked as Exhibit 16, includes three planning reports pertaining to the proposed alternative development, a draft order, and the revised OPA and ZBA.

The Proposed Alternative Development

[6] Based on Mr. Hillman's affidavit, the Tribunal understands that the parties used the Board's comments in the 2018 Decision as a basis for discussing and arriving at an alternative development proposal to provide an appropriate and viable transition between industrial uses to the west of the subject property and residential uses to the south and east. The parties ultimately achieved consensus on an alternative land use plan that includes:

- 20.5 hectares ("ha") of land for residential uses offering a range of housing types, including single unit dwellings, semi-detached and multi-unit dwellings and multi-storied retirement buildings;

- A 0.75 ha commercial parcel situated at the northeast corner of the 8th Concession Road / North Talbot Road intersection;
- Areas identified for a potential stormwater management pond and stormwater drainage corridor;
- A 30-metre (“m”) wide strip of land along the western boundary of the subject property adjacent to the 8th Concession Road and extending fully from the commercial block to the northern limit of the subject property, to be conveyed to the Town in order to provide adequate separation from the industrial uses on the west side of 8th Concession Road and the proposed residential use of the balance of the subject property; and
- A multi-use pathway along the north side of the North Talbot Road that would ultimately provide connectivity to existing homes and Weston Park to the east and other proposed multi-use pathways in the vicinity.

[7] The Tribunal understands that this proposed alternative development was the result of multiple meetings among the parties. In addition, the Town held a public open house on April 29, 2019 to provide any interested persons an opportunity to review the proposed plan in an informal venue. The Town subsequently held a public meeting on May 28, 2019 to provide a final recommendation on the OPA and ZBA. From its review of Mr. Hillman’s planning reports, the Tribunal understands that there was a strong expression of public support for the proposed alternative land use plan and associated revised OPA and ZBA. Town Council subsequently passed a resolution supporting the revised OPA and ZBA, which are now before the Tribunal and appended here as Attachments A and B, respectively.

[8] The parties appeared before the Tribunal collectively in support of the revised OPA and ZBA during this TCC. It was clear to the Tribunal that these parties have worked in earnest to arrive at a proposal that adhered to the findings in the 2018 Decision. The Tribunal commended the parties for their efforts to work toward an

alternative proposal within a reasonable amount of time.

[9] Based on Mr. Hillman’s affidavit evidence, the submissions of the parties, and the Tribunal’s review of its analysis and findings in the 2018 Decision, the Tribunal is satisfied that the revised OPA is consistent with the PPS and conforms with the County of Essex Official Plan (the “County OP”). The Tribunal is similarly satisfied that the revised ZBA is consistent with the PPS, and conforms with both the County OP and the Town Official Plan, which includes the Sandwich South Official Plan. Accordingly, the Tribunal will release its final order to approve both instruments.

ORDER

[10] The Tribunal orders that the appeals are allowed in part and that:

- a) Town of Tecumseh Official Plan Amendment No. 14 is modified in accordance with Attachment A, and as modified is approved; and
- b) Town of Tecumseh Zoning By-law Amendment No. 2016-67, having the effect of amending the Sandwich South Zoning By-law No. 85-18, is amended in accordance with Attachment B.

“S. Jacobs”

S. JACOBS
MEMBER

If there is an attachment referred to in this document,
please visit 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
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Attachment A

REVISED PART B - OFFICIAL PLAN AMENDMENT NO. 14 TO THE TECUMSEH OFFICIAL PLAN, FOR THOSE LANDS WITHIN THE FORMER TOWNSHIP OF SANDWICH SOUTH (SANDWICH SOUTH OFFICIAL PLAN)Details of the Amendment

The Sandwich South Official Plan, as amended, is hereby further amended as follows:

1. Schedule "A-2", Township of Sandwich South Official Plan, Oldcastle Hamlet & Baseline Road Hamlet Urban Area Land Use Plan, is hereby amended by changing the land use designation for those lands as depicted on Schedule "A" attached hereto from "Hamlet Development" to "Low Density Residential" and "General Commercial".
2. Section 3.2, Low Density Residential, Land Use Plan, as amended, is hereby further amended by the addition of a new subsection 3.2.2 x) to immediately follow subsection 3.2.2 ix) and to read as follows:
 - "3.2.2 x) Notwithstanding any other policy of the Plan to the contrary and having regard to OMB Decision dated January 17, 2018 (Case No.: PL160967), the 21.6 hectare property situated at the northeast corner of the 8th Concession/North Talbot Road intersection (Del Duca lands) designated "Low Density Residential" on Schedule "A-2" of this Plan shall be subject to the following additional policies:
 - a) a mixture of single-unit detached dwellings and semidetached dwellings at a maximum of 18 units per gross hectare and townhouse dwellings to a maximum of 30 units per gross hectares shall be permitted;
 - b) a retirement home with a maximum density of 60 units per gross hectare and a maximum height of four stories shall also be permitted;

- c) a 30-metre (98-foot) wide buffer strip along the western boundary of the property adjacent to the 8th Concession Road and extending from the commercial block to the northern limit of the subject property shall be required. The buffer strip shall comprise:
- i) a berm with tree plantings;
 - ii) a multi-use pathway; and
 - iii) a drainage feature/swale for the conveyance of stormwater subject to the completion of a stormwater management study for the entire subject property to the satisfaction of the Town and the Essex Region Conservation Authority.

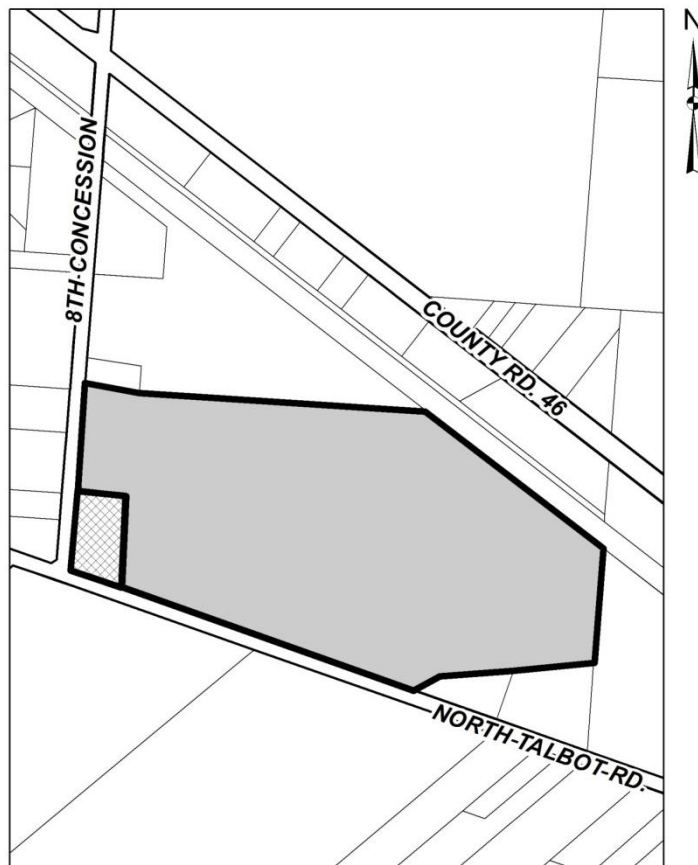
Lands associated with the multi-use pathway included as part of the buffer strip shall be included in the calculation of any required parkland dedication or cash-in-lieu, in accordance with the Planning Act;

- d) a stormwater drainage corridor along the northern extent of the property and along the northeastern portion of the property where it abuts the former railway lands may be a feature considered as part of the stormwater management study. This stormwater drainage corridor, if deemed appropriate by the stormwater management study as approved by the Town and the Essex Region Conservation Authority, shall also provide for a multi-use pathway that will provide a linkage between the residential areas, commercial areas and adjacent parkland; and
- e) it is anticipated that a stormwater management facility addressing quality and quantity control for the subject property will be located at the easterly extent of the property. The final location and design of the stormwater management facility will be subject to the completion of a stormwater management study to the satisfaction of the Town and the Essex Region Conservation Authority and will be designed so as provide a visual amenity and passive recreational opportunities and be an integral component of the development.”

Implementation of the Amendment

This official plan amendment will be implemented through a corresponding zoning bylaw amendment, being completed concurrently, which will place the lands in a sitespecific "Holding - Residential Zone 2 (H)R2-4", "Holding - General Commercial Zone (H)C1-9" and "Holding - Parks and Open Space Zone (H)P-5" in order to permit the proposed uses upon removal of the Holding (H) symbol, along with the future execution of a development agreement and site plan control agreement. The Holding (H) symbol will be removed in accordance with the Planning Act and associated policies in the Official Plan.

SCHEDULE "A"
 OFFICIAL PLAN AMENDMENT NO. 14
 CON 8, W PT LOT 11
 PLAN 12R-4966, PARTS 1 & 3
 TOWN OF TECUMSEH



0 125 250 500
 Metres

-  Change from "Hamlet Development" to "General Commercial"
-  Change from "Hamlet Development" to "Low Density Residential"

Attachment B

CORPORATION OF THE TOWN OF TECUMSEH
REVISED ZONING BY-LAW AMENDMENT 2016-67

DELETE SECTION 1 OF BY-LAW 2016-67 AND REPLACE WITH NEW SECTIONS 1 TO 4 NOTED BELOW.

DELETE PRIOR SCHEDULE "A" OF BY-LAW 2016-67 AND REPLACE WITH NEW SCHEUDLE "A" NOTED BELOW.

1. That Schedule "A", Map 7, to By-law 85-18, as amended, is hereby further amended by changing the zoning classification for those lands depicted on Schedule "A" attached hereto and forming part of this by-law from "Agricultural Zone (A)" to "Holding - Residential Zone 2 (H)R2-4", "Holding - General Commercial Zone (H)C1-9" and "Holding - Parks and Open Space Zone (H)P-5".
2. That By-law 85-18, Section 6A, Residential Zone 2 (R2) Zone Regulations, as amended, is hereby further amended by the addition of a new subsection 6A.3.4 to immediately follow subsection 6A.3.3 and to read as follows:

"6A.3.4 Defined Area R2-4 as shown on Schedule "A", Map 7, of this By-Law.

a) Permitted Uses

- i) uses permitted in subsection 6A.1.1;
- ii) semi-detached dwellings;
- iii) townhouse dwellings;
- iv) senior citizens housing;
- vi) accessory uses.

b) Permitted Building and Other Structures

- i) buildings and structures for the uses permitted in subsection 6A.3.4 a) i) with each dwelling unit on a separate lot;
- ii) buildings and structures for the uses permitted in subsection 6A.3.4 a) ii) to iv);
- iii) accessory buildings and structures for the uses permitted in subsection 6A.3.4 a).

c) Minimum Lot Area

- | | | |
|------|-------------------------|---|
| i) | single unit dwellings | 465 sq. metres <u>(5,005.2 sq. ft)</u> |
| ii) | semi-detached dwellings | 370 sq. metres <u>(3,982.6 sq. ft)</u>
per dwelling unit |
| iii) | townhouse dwellings | 232 sq. metres <u>(2,497.2 sq. ft)</u>
per dwelling unit |
| iv) | senior citizens housing | 0.8 hectares <u>(2.0 acres)</u> |

d) Minimum Lot Frontage

- | | | |
|------|-------------------------|---|
| i) | single unit dwellings | 15.24 metres <u>(50.00')</u> |
| ii) | semi-detached dwellings | 9.1 metres <u>(30.0')</u> per dwelling
unit |
| iii) | townhouse dwellings | 6.0 metres <u>(19.68')</u> per dwelling
unit |
| iv) | senior citizens housing | 60.96 metres <u>(200.0')</u> |

e) Maximum Lot Coverage

- | | | |
|----|-----------------------|------------|
| i) | single unit dwellings | 40 percent |
|----|-----------------------|------------|

ii)	semi-detached dwellings	45 percent
iii)	townhouse dwellings and senior citizens housing	50 percent
f)	<u>Minimum Landscaped Open Space</u>	30 percent
g)	<u>Maximum Building Height</u>	
i)	senior citizens housing	4 storeys
ii)	all other uses	10.6 metres <u>(34.7')</u>
h)	<u>Minimum Front Yard Depth</u>	7.6 metres <u>(24.9')</u>
i)	<u>Minimum Interior Side Yard Width</u>	
i)	single unit dwellings	1.2 metres <u>(3.93')</u> , plus 0.6 metres <u>(1.96')</u> for each additional storey above the first storey
ii)	semi-detached dwellings	1.2 metres <u>(3.93')</u> , plus 0.6 metres <u>(1.96')</u> for each additional storey above the first storey and no requirement where there is a common dividing wall
iii)	townhouse dwellings	1.5 metres <u>(4.92')</u> , plus 0.6 metres <u>(1.96')</u> for each additional storey above the first storey and no requirement where there is a common dividing wall
iv)	senior citizens housing	4.5 metres <u>(19.68')</u>

- j) Minimum Exterior Side Yard Width
 - i) senior citizens housing 6.0 metres (19.68')
 - ii) all other uses 4.5 metres (14.76')

- k) Minimum Rear Yard Depth 7.6 metres (24.9')

3. That By-law 85-18, Section 8, General Commercial Zone (C1) Zone Regulations, as amended, is hereby further amended by the addition of a new subsection 8.3.7 to immediately follow subsection 8.3.6 and to read as follows:

“8.3.7 Defined Area C1-7 as shown on Schedule “A”, Map 7, of this By-Law.

- a) Permitted Uses
 - i) clinic;
 - ii) convenience store;
 - iii) day nursery and adult day care centres;
 - iv) financial institution;
 - v) health studio;
 - vi) offices, general or professional;
 - vii) personal service shop;
 - viii) professional studio;
 - ix) restaurant, including a restaurant with a drive-through;
 - x) retail stores;
 - xi) tavern;
 - xii) accessory uses.

b) Permitted Building and Other Structures

- i) buildings and structures for the uses permitted in subsection 8.3.7 a);
- iii) accessory buildings and structures for the uses permitted in subsection 8.3.7 a).

c) Zone Provisions

All lot and building requirements for the permitted buildings and structures in subsection 8.3.7 a) shall be in accordance with subsections 8.1.3 to 8.1.15, inclusive of this By-law.”

4. That By-law 85-18, Section 17, Parks and Open Space Zone (P) Zone Regulations, as amended, is hereby further amended by the addition of a new subsection 17.3.5 to immediately follow subsection 17.3.4 and to read as follows:

“17.3.5 Defined Area P-5 as shown on Schedule “A”, Map 7, of this By-Law.

a) Permitted Uses

- i) a landscaped buffer strip that may comprise of a berm with tree plantings, a multi-use pathway and associated stormwater management features;
- ii) accessory uses.

b) Permitted Building and Other Structures

- i) buildings and structures for the uses permitted in subsection 17.3.5 a);
- iii) accessory buildings and structures for the uses permitted in subsection 17.3.5 a).

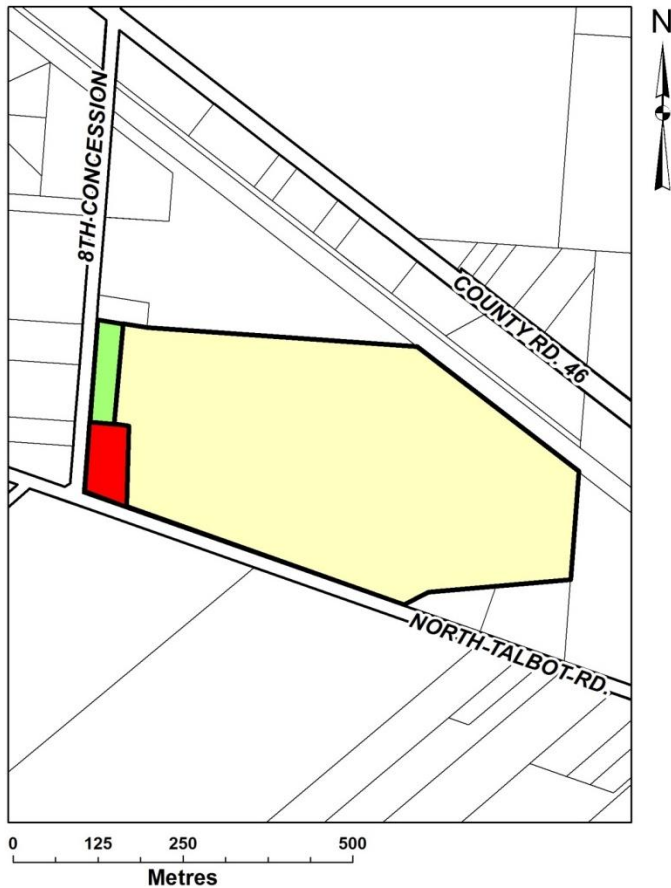
c) Zone Provisions

All lot and building requirements for the permitted buildings and structures in subsection 17.3.5 a) shall be in accordance with subsections 17.1.3 to 17.1.11, inclusive of this By-law, except for the following:

- i) Minimum Lot Area 0.4 hectares (0.98 acres).

Approved this ____ day of _____, 2019.

SCHEDULE "A"
 CON 8, W PT LOT 11
 PLAN 12R-4966, PARTS 1 & 3
 TOWN OF TECUMSEH



- Change from "Agricultural Zone (A)" to "Holding-General Commercial Zone (H)C1-7"
- Change from "Agricultural Zone (A)" to "Holding-Residential Zone 2 (H)R2-4"
- Change from "Agricultural Zone (A)" to "Holding-Parks and Open Space Zone (H)P-5"

This is the revised Schedule "A" to By-law No. 2016-67.
 Approved the ____ day of _____, 2019.