

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 11, 2022

CASE NO(S).:

OLT-21-001133

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

Appellant:	Scott Fawcett
Applicant	Northwest Catholic District School Board
Subject:	By-law No. 03/14
Municipality:	Town of Fort Francis
OLT Lead Case No.:	OLT-21-001133
OLT Case No.:	OLT-21-001133
OLT Case Name:	Fawcett v. Fort Frances (Town)

Heard: By written submissions

APPEARANCES:

Parties

Counsel*/Representative

Scott Fawcett ("Appellant")

Self-represented

Town of Fort Frances ("Town")

A. McKitrick*/A.M. McKitrick*

DECISION DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Tribunal issued its Interim Decision on January 25, 2022, with regard to a Zoning By-law Amendment ("ZBA") that proposed the adaptive reuse of a former school building and site for: 13 units in the former school building and an Early ON Family Centre with play area, and up to 5 eightplex buildings at the rear of the property known municipally as 820 Fifth Street ("Subject Lands").

[2] The Interim Decision approved in principle the ZBA subject to the Town providing a fully dimensioned conceptual site plan to scale, and a revised draft site specific Zoning By-law deeming Fifth Street as the frontage.

[3] The Tribunal received communication from counsel for the Town dated February 17, 2022, which communication has been entered as Exhibit 12 (added to the exhibits previously filed at the Tribunal hearing of January 13-14, 2022).

[4] Attached to counsel's letter was a revised draft ZBA, and the revised conceptual site plan dated February 9, 2022.

ZBA

[5] Exhibit 12 highlights two minor corrections to Exhibit 5 (the January 6, 2022, draft of the site specific ZBA) being: firstly, to correct a typographical error in paragraph 2 (b) to reference s. 4.5 of the ZBA (and not s. 45); and secondly in paragraph 2 (e)(2) under Location of Uses, to delete "wall" after "building" as being redundant. so that the paragraph would now read:

All eightplex dwellings shall be located on the Easterly half of the Property and no wall of any such building shall be closer than 7.5 metres from a wall of any other main building.

[6] Next Exhibit 12 notes the deeming of Fifth Street as the frontage for the Subject Lands.

[7] And finally Exhibit 12 proposes to clarify that clause 4.5.4 of the ZBA applies to the eightplex dwellings.

CONCEPTUAL SITE PLAN

[8] The conceptual site plan attached to Exhibit 12 is to scale, is dimensioned, and

provides the required setbacks for the Subject Lands, with frontage to Fifth Street.

COMMENTARY

[9] The proposed minor changes in Exhibit 12 assist with the wordsmithing of the ZBA, while Exhibit 12 does deem Fifth Street be the frontage and a clarification is provided for the zoning of the eightplexes. All are acceptable to the Tribunal.

[10] The Tribunal would point out that in s. 1 of the ZBA in Exhibit 12 (as it was in Exhibit 5) after providing the legal description of the Subject Lands, the ZBA then notes that they are removed from the Institutional (I) Zone and “designated” as part of the Residential Type Two (R2) Zone.

[11] In the ordinary course, the *Planning Act* speaks to Official Plan land use “designations” and the Tribunal observes that it might have been preferable for the ZBA to provide that the Subject Lands had been rezoned to use the language of s. 34 of the *Planning Act*.

[12] That notwithstanding, the Tribunal discerns no material impact arises and the Tribunal is content that the plain intention of the ZBA in Exhibit 12 is to change the zoning of the Subject Lands to the requested site specific zoning that will allow for the adaptive reuse of the school building and for the anticipated construction of the eightplexes.

[13] Thus, the Tribunal hereby issues its Final Order, allowing the appeal in part and approving the revised ZBA inter alia deeming Fifth Street as the frontage, all as found in Exhibit 12 appended hereto as Attachment 1 and forming part of this decision.

[14] This is the Final Order of the Tribunal.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.



McKITTRICKS

ATTACHMENT 1

Exhibit:	12
File #:	

Barristers and Solicitors

Allan G. McKittrick, Q.C., J.D.

*Allan D. McKittrick
B.A., LL.B.*

February 17, 2022

Sent by e-mail: shane.taylor@ontario.ca and by Purolator

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto ON
M5G 1E5

Attention: Shane Taylor
Tribunal Case Coordinator

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OLT Case Name:	Fawcett v. Fort Frances (Town)

Dear Mr. Taylor:

In its Decision and Interim Order dated January 25, 2022, the
Tribunal required provision of the following:

- a) A fully dimensional conceptual site plan to scale; and
- b) A revised draft ZBA specifying Fifth Street as the frontage
of the Subject Lands.

a) CONCEPTUAL SITE PLAN

*Callion Block
17A Cumberland Street South
Thunder Bay, Ontario
P7B 2T3*

The site plan dated February 9, 2022 prepared by Saulaux
Engineering and Consulting is attached.

*Phone: (807) 345-1251
Fax: (807) 345-0043
Toll Free (Area Code 807 only) 1-800-465-3938
Email: mckits@tbaytel.net*

The existing buildings are the school and the maintenance shed.

The plan represents the current intent of the DSSAB however the precise number and location of the buildings on the Easterly half of the Parcel will be dependent on the final design and, significantly, availability of government grants.

The location and type of building will, of course be determined by the requirements of the R2 Zone subject to the amendments requested in the Tribunal's Order. In particular, the required setbacks are shown on the plan as are the minimum distances from the lot lines and between buildings.

In short, it is a conceptual plan and the final configuration will need to comply with the provisions of the By-law, as well as the provisions of a site plan agreement the form of which will be crystallized when all details of the development have been finalized.

b) FORM OF BY-LAW

The attached is a draft of the Order sought.

Please consider the following Submissions.

1. Corrections

I point out a couple of minor changes from the draft which was submitted as an Exhibit:

- in Paragraph 2.b) PERMITTED USES, the Section Number in the first line has been corrected to "4.5" from "45"; and
- in subparagraph 2.e) LOCATION OF USES, the word "wall" after "building" is redundant and has been deleted.

2. Fifth St. Frontage

The added Paragraph 2.f) DESIGNATION OF LOT LINES, now deems the lot line abutting Fifth Street as the front lot line with the Frenette Avenue line being deemed the exterior side lot line and the remaining lines as the rear and interior side accordingly.

This is consistent with the way the lands have been developed and will be developed with the entrances coming off Fifth Street and with the 8-plexes facing toward that street and the change was supported by the Planner's evidence.

3. Regulations for Eight Plex Dwellings

The evidence submitted and the amendments requested in the draft Order were based on the 8-Plexes being governed by Section 4.5.4 of the By-law, hence the reference to Clauses 4.5.4 a), b) and c) in Paragraph 2.d) YARD REQUIREMENTS.

To clarify that the remainder of Section 4.5.4 applies, I have added Paragraph 2.g) to the draft Order.

.....
I hope that the above satisfies the Tribunal's requirements. If anything further is required, please let me know.

Yours very truly,



Allan G. McKittrick, Q.C.
AGMcK:mk

Encl.

c.c. Scott Fawcett - Appellant
Cody Vangel - Planner - Town of Fort Frances
Dan McCormick - CAO - RRDSSAB
Jeff Port - Planning Consultant

ORDER

That Section 1 of By-law No. 03/14-Y is deleted and the following substituted therefore:

- "1. That By-law No. 03/14-Y is amended by adding a Schedule thereto in the form of Exhibit "1" to this By-law."

Exhibit "1" to By-law No. 03/14-Y

SCHEDULE _____

1. Notwithstanding the Zone designation thereof as shown on the Zoning Map being Schedule "A" to this By-law, the lands and premises being more particularly described as follows, namely:

820 Fifth Street East, Fort Frances, Ontario

Legally described as

PCL 18499 SEC RAINY RIVER; PT LT 23 RIVER RANGE MCIRVINE; PT LT 24 RIVER RANGE MCIRVINE PT 2 RR164 EXCEPT PT 1, 48R1193; FORT FRANCES

BEING ALL OF THE PIN 56017-0034(LT),

hereinafter referred to as the "Property", are hereby removed from the Institutional (I) Zone and designated as part of the Residential Type Two (R2) Zone.

2. Notwithstanding the provisions of Section 4.5 of this By-law, or any other provisions of this By-law to the contrary, in the case of the Property the following provisions shall apply.

a) DEFINITIONS

In this Schedule:

"Child Care and Early Years Centre" means a premises operated under a licence from the Province of Ontario whereat programmes are provided under the *Child Care and Early Years Act, 2014* or where similar programmes are provided under Provincial Licence.

"eightplex dwelling" means a separate building containing two stories on each of which are located four dwelling units without a common hallway or stairwell and with independent direct access to the outside.

b) PERMITTED USES

In addition to the uses permitted on the Property pursuant to Section 4.5 of this By-law, the following are permitted uses on the Property:

- Child Care and Early Years Centre; and
- eightplex dwelling.

c) MAIN USES AND BUILDINGS

More than one main use and building is permitted on the Property, provided that the regulations of the R2 Zone as amended by this Schedule are met.

d) YARD REQUIREMENTS

Notwithstanding the provisions of Clauses 4.5.4 a), b) and c) of this By-law where the Property is occupied by more than one main building:

- i. the minimum lot area required for all main buildings collectively is the total lot area of the Property;
- ii. the minimum required lot frontage for all main buildings collectively is the full frontage of the Property; and
- iii. the minimum front, interior side, exterior side and rear yards shall be determined by reference only to the main building which is nearest to the applicable lot line.

e) LOCATION OF USES

1. A Child Care and Early Years Centre, together with an apartment dwelling are permitted uses in the former school building located on the Property as at the date of passage of this By-law.
2. All eightplex dwellings shall be located on the Easterly half of the Property and no wall of any such building shall be closer than 7.5 metres from a wall of any other main building.

f) DESIGNATION OF LOT LINES

Notwithstanding the definitions set out in Section 2 of this By-law, in the case of the Property, the lot line abutting Fifth Street shall be deemed to be the front lot line, the lot line abutting Frenette Avenue shall be deemed to be the exterior lot line, the Northerly lot line shall be deemed to be the rear lot line and the Easterly lot line shall be deemed to be a side lot line.

g) REGULATIONS FOR EIGHTPLEX DWELLINGS

Except as otherwise provided in this Schedule, the Regulations for an apartment dwelling as set out in Clause 4.5.4 of this By-law apply to eightplex dwellings on the Property.

