

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** January 25, 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.:	21-001133
OLT Case No.:	21-001133
OLT Case Name:	Fawcett v. Fort Frances (Town)

**Heard:** January 13-14, 2022 by video hearing

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Scott Fawcett ("Appellant")

Self-represented

Town of Fort Frances ("Town")

A. McKitrick\*/A.M. McKitrick\*

**DECISION DELIVERED BLAIR S. TAYLOR AND INTERIM ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The Town Council approved a Zoning By-law Amendment ("ZBA") for the property known municipally as 820 Fifth Street East ("Subject Lands") which was appealed to the Tribunal by the Appellant.

## **DECISION**

[2] For the reasons set out below, the Tribunal will allow the appeal in part, but approves the ZBA in principle subject to the Town providing to the Tribunal the following:

- a. A fully dimensioned conceptual site plan to scale;
- b. A revised draft ZBA specifying Fifth Street East as the frontage for the Subject Lands.

## **BACKGROUND AND CONTEXT**

[3] The Subject Lands were formerly used as St. Michael's School established in or about 1962. The Subject Lands are improved with the former school building, a shed, and playground equipment, and with a play area which is central to this appeal.

[4] The Subject Lands are located on a corner lot at the intersection of Frenette Avenue and Fifth Street East. The Subject lands have an area of about 16,849 square metres ("sq m"): being about 83 metres ("m") wide at Frenette Avenue with a depth of about 202 m along Fifth Avenue East. The play area is estimated by the Appellant to be .89 hectares ("ha"), (which from Exhibit 11 appears to include about one half of the school parking lot).

[5] The Subject Lands are located in an area of the Town where sanitary sewer, municipal water and storm water services are all available.

[6] Under the Official Plan the Subject Lands are designated "Living Area" which allows for all forms of residential uses, and zoned under the Town's Zoning By-law as "Institutional" which allows for uses such as a school.

[7] The Subject Lands are owned by the Northwest Catholic District School Board ("School Board"). However, the Subject Lands were declared surplus by the School

Board, and the development application before the Tribunal is based on an agreement of Purchase and Sale between the School Board and the Rainy River District Social Services Administration Board (“RRDSSAB”).

[8] The RRDSSAB rezoning proposes an adaptive reuse and retrofit of the former school building to house 13 senior apartments (with some support services), and an Early ON Family Centre and outside Early ON play area. Additionally, up to 5 eightplex buildings (2 storeys in height) are proposed in the play area. On the ground floor, each eightplex would have two 1 bedroom barrier-free apartments and two bachelor apartments. On the second floor of each eightplex would be four 1 bedroom apartments. 30% of the apartments must be at 20% of market rent and the remainder would be at market rent.

[9] In order to facilitate this proposed redevelopment, the ZBA application was filed to rezone the Subject Lands to a site specific R-2 zone, to allow the seniors’ residence, the Early ON Family Centre, and the proposed eightplexes, all on the same lot.

[10] The proposed rezoning was recommended to Town Council by the Town’s Chief Building Official and Municipal Planner and adopted by Town Council.

[11] In the lead up to the hearing, there were two proposed draft changes to the ZBA: the first to include a legal description of the Subject Lands, and provide definitions for the Early ON Family Centre and an eightplex dwelling. The second proposed to increase the separation space from each eightplex dwelling to any other main building from 2.5 m to 7.5 m.

[12] Integral to this appeal is the fact that pursuant to the 1989 Joint Use Agreement between the Town and the School Board, the outdoor and athletic facilities at St. Michael’s School were available for Town uses after 5 p.m. during the school term and all day during the summer months.

## **THE HEARING**

[13] At the hearing, the Tribunal heard the viva voce evidence of the Appellant.

[14] On behalf of the Town, the Tribunal heard the evidence of Cody Vangel, qualified to give expert opinion evidence as a civil engineer and land use planner, Dan McCormick the Chief Administrative Officer of the RRDSSAB, and Jeffrey Port qualified as a land use planner.

## **APPEAL GROUNDS**

[15] The basis of the appeal is nuanced: firstly that there is no objection to the adaptive reuse and retrofit of the former school building for the seniors' residence and Early ON Family Centre, but that the Tribunal should preserve the existing play area by not allowing the rezoning of the play area for the proposed 5 eightplexes, (to be relocated to some other location in the Town), and the Appellant seeks the assistance of the Tribunal to find a compromise solution.

[16] The first ground of appeal challenges the public process as no public open house was held by the Town, that the public meeting was during Covid 19 and "audio only", and that while 3 citizens spoke in opposition, there were others who also wished to speak but were not able to due to the public meeting format.

[17] The second ground of appeal is that the play area is effectively a public park and that the playground equipment was provided by neighbourhood fundraising (\$30,000.00) and a donation from the Knights of Columbus, and has been used since about 1989, and further that the play area has been used on an informal basis since the school was constructed in or about 1962.

[18] The related third ground of appeal is that the proposed rezoning would not be in conformity with the Town's Official Plan as it would result in the inequitable distribution of park space in the east end of the Town, and this is part of a trend in the east end of the Town.

## **POLICY REGIME**

[19] The *Planning Act* (“PA”) in s. 1 provides as one of its purposes that land use planning in Ontario is policy-led.

[20] Section 2 of the PA sets out a number of Provincial Interests that the Town Council and this Tribunal shall have regard to in making any land use planning decision. Those interests include:

- (i) The adequate provision of recreational facilities; (i)
- (ii) The adequate provision of a full range of housing including affordable housing; (j)
- (iii) The resolution of planning conflicts between public and private interests; (n)
- (iv) The appropriate location of growth and development (p).

[21] Section 2.1 requires that when the Tribunal makes a decision on a land use planning matter it shall have regard to both the decision made by Town Council and the information and material that the Town Council considered in making its decision.

[22] Finally from the PA, s. 3(5) mandates that the Tribunal (and the Town Council before it) when making a land use planning decision, that such a decision shall be consistent with the Provincial Policy Statement (“PPS”) and shall conform to provincial plans that are in effect, such as in this case the Growth Plan for Northern Ontario 2011 (“NOGP”).

## **NOGP**

[23] The NOGP sets out among its purposes to enable decisions about growth to be made in ways that sustain a robust economy and build strong communities (1.2 (a)) and

to promote a rational and balanced approach to decisions about growth that build on community priorities, strengths and opportunities and makes efficient use of infrastructure (1.2 (b)).

## **PPS**

[24] Both the PPS Preamble and the Implementation and Interpretation section provide that the Official Plan is the most important vehicle for the implementation of the PPS (s. 4.6).

[25] In Part IV of the PPS, the PPS Vision focuses growth and development in urban and rural settlement areas, encourages a range and mix of housing options including new development and intensification, and encourages efficient development patterns that optimize the use of land, resources, and public investment in infrastructure. These efficient land use patterns are to promote a mix of housing including affordable housing, employment, recreation parks and open spaces.

[26] Moving from the Vision statement into the policies of the PPS, one finds these directives:

- Healthy, liveable and safe communities are sustained by;
- Promoting efficient development and land use patterns (1.1.1 (a))
- Accommodating an appropriate affordable and market-based range and mix of residential types (including affordable housing and housing for older persons (1.1.1 (b))
- Promoting standards to minimize land consumption and servicing costs (1.1.1 (e))
- Settlement areas shall be the focus of growth and development (1.1.3.1)

- Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form (1.1.3.4)
- Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents by: ...establishing development standards for residential intensification, redevelopment and new residential development which will minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety (1.4.3 (f)).
- Healthy active communities should be promoted by: ... planning and providing for a full range and equitable distribution of publicly-accessible built and natural settings for recreation... (1.5 (b)).

## **OFFICIAL PLAN**

[27] The Subject Lands are designated in the Official Plan as “Living Area”, wherein the permitted uses include all forms of residential development.

[28] One of the objectives of the Living Area designation is that the Town will promote opportunities for residential intensification and redevelopment on lands within the serviced area of the Town (4.1.1 (d)).

[29] With regard to residential development s. 4.1.3 (c) provides that new housing development should reflect a range of lot and housing sizes including smaller, affordable housing units, which would be suitable for seniors and smaller families.

[30] Section 4.1.8 (d) provides that infilling and intensification is encouraged throughout the Town’s existing built up residential areas and that intensification should address: compatibility, lot pattern and configuration, accessibility, parking requirements, potential for increased traffic, any natural hazards, built heritage, availability of municipal infrastructure, and residential intensification targets.

[31] Additionally s. 4.1.8 (f) states that the Town will work with the appropriate housing agencies to ensure that a sufficient supply of housing is provided which is affordable to low and moderate income households, and that the Town will consider alternative requirements for residential lot standards and required floor space in the Zoning By-law which would support the provision of affordable housing.

[32] Within the Living Areas designation, the Official Plan provides in s. 4.1.6 that neighbourhood parks should be provided within 1000 m of all residential uses, and that neighbourhood parks should be between 1.5 and 2.0 ha in size.

## **LOCAL CONTEXT**

[33] As a former school, the Subject Lands are found in the midst of a mature residential area that is predominantly single detached homes. There are two existing cul-de-sacs that abut the Subject Lands from the north, and one cul de sac from the east. Fifth Street East appears to have a student drop off lane within the public right of way in the immediate vicinity of the school building.

## **ZONING BY-LAW**

[34] The current zoning for the Subject Lands is Institutional. The permitted uses in an Institutional zone include: ambulance station, arena, assisted living facility, day nursery, fire station, hospital, library, nursing home, place of worship and a school.

[35] The regulations allow height of 20 m, and a minimum landscaped areas of 10%.

[36] The proposed zoning generally relates to the R-2 zone which specifically allows residential uses including fourplex dwellings, and apartment buildings.

[37] Here the zoning would allow height to 12 m for a fourplex and 15 m for an apartment building, and the minimum landscaped area for a fourplex is 20%, and for an apartment building 30%.



[38] Of note for this appeal is the fact that there is neither a definition for “eightplex” nor “Early ON Family Centre” in the Zoning By-law.

[39] Also, from the definitions section of the Zoning By-law it is noted that there is a definition for front lot line for a corner lot which impacts this development application:

In the case of a corner lot or through lot, the shorter lot line that abuts a street or navigable waterway shall be deemed to be the front lot line and the longer lot line that abuts a road or (navigable waterway) shall be deemed an exterior lot line.

## **DEVELOPMENT PROPOSAL**

[40] As noted above, while the Subject Lands are currently owned by the School Board, there is an existing agreement of purchase and sale with the RRDDSSAB.

[41] Mr. McCormick, the CAO of the RRDDSSAB testified that this board is made up of representatives of 10 municipalities and 3 unincorporated areas covering a geographic area of 15,000 square kilometres. It is responsible for housing and homelessness, has a \$27 million per year budget and *inter alia* it directly operates childrens’ services, and it oversees 498 housing units of which it directly oversees 350. For its 350 housing units, there is currently a waiting list of 253.

[42] Mr. McCormick testified that there is a local housing shortage that has been exacerbated by the opening of a new mine in the area that has taxed the existing rental housing supply.

[43] The RRDSSAB’s vision for the Subject Lands is to move forward in a phased approach with the first phase being the adaptive reuse and retrofit of the existing school building for 13 rental units (20% affordable), with some on site support services, and the Early ON family centre. The latter he described as being a resource program where parents are taught parenting skills. The parents (and children) do not come for the day but rather come and interact with the resource staff and receive instruction and resource materials and leave. There are two classrooms that would be utilized for such purposes,

with some office space for the program leaders who also provide this resource in three other geographic locations. Additional office space is intended for a nurse's station and for clinics.

[44] The second phase of development would be for the proposed 5 eightplexes in the play area behind the school. The units proposed are relatively small in size: on the second floor are four 1 bedroom units each at 660 square feet (sq. ft"), whereas on the ground floor, there will be two barrier-free 1 bedroom units at 746 sq ft and two bachelor units at 580 sq ft.

[45] Mr. McCormick anticipates that each eightplex will cost about \$2 million to construct and that with funding available they would likely start with two eightplexes, and fund raise thereafter for the other units.

[46] From the RRDSSAB perspective, the Subject Lands provide for the adaptive reuse of an existing building, utilize existing municipal services, are "shovel ready", and with the two projects all being on the same lot, it will enable economies of scale.

[47] As part of the staff report that went to Town Council, a conceptual site plan was included. As the application for the ZBA identified Fifth Street East as the frontage, so too did the conceptual site plan. Additionally, notwithstanding the proposed amendment to the draft ZBA to increase the separation distance for an eightplex to 7.5 m, no revised concept plan was provided.

## **COMMENTARY AND ANALYSIS**

[48] Firstly, with regard to the Appellant's concern with the lack of an informal public meeting, there is no statutory requirement for same.

[49] With regard to the Appellant's concerns about the public meeting held by the Town, the Tribunal notes that Exhibit 6 at page 38 contains a copy of the March 4, 2021 newspaper notice of the public meeting to be held on April 12, 2021 virtually and by teleconference.

[50] The Tribunal takes judicial notice of the fact that as of April 7, 2021, the Province had made its third Emergency Order with regard to Covid 19 and a Stay at Home order was in place.

[51] With regard to the public meeting, the staff report of April 26, 2021 noted that 80 letters of opposition had been received and three members of the public spoke in opposition to the application.

[52] When the staff report went to Town Council, it included the public submissions. The staff report considered and responded to the issues of concern that had been raised by members of the public.

[53] The Tribunal notes that the required public meeting occurred during an Emergency Order and a Stay at Home order. The Town gave the required notice, and in that notice identified how the public meeting would be held due to the Covid 19 restrictions. Additionally, the Tribunal would note that Town Council did not make a decision on April 12, 2021: Town Council made its decision on April 26, 2021 and passed the implementing ZBA on May 10, 2021. Thus, there was additional time after the public meeting for more public input to the Town Council before it made its decision.

[54] With regard to the expressed concern about the public meeting, the Tribunal finds that the Town acted in accordance with the requirements of the PA and the Covid 19 restrictions that were in place at the time.

[55] Turning to the Appellant's submissions with regard to the play area as a "public park", the Tribunal would first note that the Town has never owned the Subject Lands; rather the Subject Lands were and are currently owned by the School Board, and are the subject of an Agreement of Purchase and Sale conditional on rezoning.

[56] It is noted that the Subject Lands were part of a Joint Use Agreement between the School Board and the Town dated as of June 12, 1969 (Exhibit 6 Tab 8). The said agreement provides that the agreement may be terminated at any time the two parties agree the Outdoor Facilities are no longer usable, or upon written notice by either party

at any time after the year 2009. Also, at the same tab, there is a letter dated May 28, 2021 from the School Board terminating the agreement.

[57] The Appellant submits that the neighbours fundraised \$30,000.00, and combined with a \$5,000.00 donation from the Knights of Columbus, provided the funding for the purchase of the outdoor playground equipment that was installed through the sweat equity of the neighbours. Exhibit 3 contains a picture of the sign identifying the “Knights of Columbus Park” in front of the playground equipment. To the Appellant this constitutes a municipal park and it should remain a municipal park.

[58] To the Tribunal it is clear that the Joint Use Agreement provided the term of the joint use: the agreement could be terminated at any time both parties agreed it was no longer usable, or unilaterally by either party after the year 2009. That agreement was terminated in 2021. No notice to any other person or party was required. It is not a municipal park for the purposes of this hearing.

[59] Supplemental to his submissions on the play area being a municipal park, the Appellant argues that pursuant to s. 4.1.6 of the Official Plan, the Town has a requirement that neighbourhood parks are to be provided within 1000 m of all residential uses, and with the Town approval of the impugned ZBA, it is contrary to the Official Plan and moreover it is part of a trend that has led to an inequitable distribution of park space in the east end of the Town.

[60] Exhibit 11 purports to contain seven examples of such loss of public recreational green space since 1970 totalling 3.7 ha of land. This exhibit is based on a very narrow approach to recreation. The Appellant cites the redevelopment of the Memorial Sports Centre fields as a loss of 1.69 ha. However, the “loss” of the 1.69 ha is now (according to the exhibit) the home for the new Sportsplex, Ice for Kids Arena, a library, a skateboard park, and a parking lot to serve these recreational uses.

[61] The PPS does speak to providing a full range and equitable distribution of recreational spaces. However, that policy direction is not limited to just outdoor space

but also includes built facilities for recreation.

[62] Additionally, the Town's Official Plan states that neighbourhood parks should be provided within 1000 m of all residential uses and should be between 1.5 – 2 ha in size.

[63] The Tribunal prefers the evidence of Mr. Vangel and Mr. Port that the play area is not a municipal/neighbourhood park, that it does not meet the size requirement of the Official Plan at 1.5 - 2.0 ha, and there are other municipal parks that are in the general vicinity in the Subject Lands that satisfy the Official Plan direction.

[64] Finally, the Appellant argues that the Tribunal should be used as a facility to find a compromise solution, and gave a number of examples of sites in other residential areas that he believed would be appropriate for the relocation of the eightplexes.

[65] The Tribunal would point out that Tribunal has a Citizen Liaison Officer and a Tribunal website, both of which are dedicated to assisting the public to understand the Tribunal's hearing process. The website contains references to the Tribunal's very experienced mediation panel, that can, if both parties agree, assist in mediating disputes. However ultimately, where parties maintain their appeals, the Tribunal has been statutorily created to hear and determine matters within its jurisdiction.

[66] Thus, the Tribunal at this late stage of this proceeding is not in the position of a mediator but rather an adjudicator required to make a decision based on the evidence that has been given.

[67] To the Tribunal this development proposal represents:

- the redevelopment of a currently vacant and underutilized site;
- the adaptive reuse and retrofit of a surplus school site;
- a modest form of residential intensification that will add to the range and mix of housing in the local context;

- assistance in providing rental housing, senior housing, accessible housing, affordable housing, (all in a market that is experiencing rental housing supply issues due to the opening of a new mine);
- the provision of an Early On Family Centre that will be a community parenting resource;
- all of which is within a Settlement Area; and
- utilizing existing municipal services.

[68] This development proposal the Tribunal finds to have had adequate regard for the matters of Provincial Interest in s. 2 of the PA, is consistent with the PPS as a modest form of intensification within a settlement area, and expanding the range and mix of housing including housing for seniors and affordable housing, does not conflict with the NOGP, conforms to the Town's Official Plan, represents good land use planning and is in the public interest.

[69] However as the draft ZBA's that have been presented to the Tribunal are based on a concept plan that erroneously has Fifth Avenue East for the front lot line (contrary to the Town's Zoning By-law), and as Exhibit 5 requires a 7.5 m setback for the eightplexes to a wall of another main building, and as the same concept plan has no dimensions whatsoever, the Tribunal will approve in principle the development proposal.

[70] Accordingly, the Tribunal orders that the appeal is allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of the pre-requisite matters identified below and that the ZBA found in Exhibit 5 is hereby approved in principle only.

[71] The Tribunal will withhold the issuance of its Final Order contingent upon the following:

- a. A fully dimensioned conceptual site plan to scale;

- b. A revised draft ZBA specifying Fifth Street East as the frontage for the Subject Lands.

[72] The Town shall submit the required materials found in the paragraph above to the Tribunal's Case Coordinator on or before **Monday, May 2, 2022**, failing which it shall provide a written status report by that date, documenting the timing of the expected submission of the required materials.

[73] In the event that the Town fails to provide the required materials and/or the required written status report by the required date, the Tribunal may allow the appeal.

[74] I remain seized of this matter for the purposes of reviewing the draft conceptual site plan, and approving the final draft of the ZBA and may be spoken to for case management purposes.

[75] This is the Interim Order of the Tribunal.

*"Blair S. Taylor"*

BLAIR S. TAYLOR  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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