

# DECISION AND ORDER

**Decision Issue Date**      Thursday, March 25, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53 (19) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): AKRAM SYED HOSSAIN

Applicant(s): ARC DESIGN GROUP DEVELOPMENT SERVICES INC

Property Address/Description: 7 BROADMEAD AVENUE

Committee of Adjustment File

Number(s): 20 112358 ESC 20 CO

**TLAB Case File Number(s): 20 178874 S53 20 TLAB**

**Hearing date:      February 25, 2021**

**DECISION DELIVERED BY JUSTIN LEUNG**

## APPEARANCES

Name	Role	Representative
ARC Design Group Development Services Inc.	Applicant	
Akram Syed Hossain	Appellant	Amber Stewart
City of Toronto	Party	Roman Ivanov
Jonathan Benczkowski	Expert Witness	
Xiaolan Yang	Participant	
Peter Hogg	Participant	
Name	Role	Representative
Eddison Shoon	Participant	

Ross Webster	Participant
Cheryl Carr	Participant
Beverley Wallis	Participant
Ryan Coughlan	Participant
Robert McGowan	Participant

## **INTRODUCTION**

This is a matter on appeal from the Scarborough Panel of the City of Toronto Committee of Adjustment (COA) which had refused an application for the severance (consent) of 7 Broadmead Avenue (subject property) to create two lots which would have a dwelling built on each. There would also be a third conveyance of a rear portion of these lands to the Toronto and Region Conservation Authority (TRCA).

This property is situated in the Cliffcrest neighbourhood in the Scarborough district which is located south of Sloley Road and bounded by Brooklawn Avenue to the west and Harewood Avenue to the east. The subject property is located on Broadmead Avenue, south of Sloley Road and north of Barkdene Hills.

This property is designated as '*Neighbourhoods*' in the City Official Plan (OP). The property is subject to 'split zoning' or two zone designations which are Residential Detached RD (f10.5; a371)(x197) and Open Space -Natural zone ON under Zoning By-law No. 569-2013. The Residential Detached RD zone permits detached dwellings, municipal shelter and aa park. The Open Space -Natural zone permits only agricultural uses, public utility, transportation use, park and for emergency services (fire, police and paramedic) facilities. There are other uses which could occur, only with conditions, which entail club, cogeneration energy, education use, entertainment, place of assembly, place of assembly, recreation use, renewable energy, retail store and stable.

At the beginning of the Hearing, I informed all Parties in attendance that I had performed a site visit of this subject property and the surrounding neighbourhood and had reviewed all pre-filed materials related to this appeal but that the evidence to be heard is of important.

## **BACKGROUND**

The Appellant initially submitted a consent to sever application to the COA in 2018. However, they had not been able to satisfy the conditions attached to the provisional consent, or conditional approval, of this application within one year from the date of the decision, as stipulated by the *Planning Act*. Related variance applications had also been applied for and approved as well. It is noted that variance applications

are not subject to similar timelines as that for consent applications in terms of satisfying conditions. As such, the approval of the variance applications is considered final and binding.

The Appellant then reapplied for a similar consent application in 2020 to obtain additional time to satisfy the outstanding conditions. However, this consent application was heard and refused at the July 23, 2020 COA meeting. The Appellant then opted to submit an appeal within the 20 day appeal period to the TLAB and a hearing was scheduled for February 25, 2021.

### *The proposal*

The proposal being considered by the TLAB is to sever the subject property into two lots and construct a new detached dwelling on each lot. The consent application, as originally proposed, also had two related variance applications, file Nos. A/058/15SC and A/059/15SC, which pertained to development standards to allow for a detached dwelling to be built on the retained and severed lots, respectively. As these two variance applications have not been appealed, I would not find it to be pertinent to expound upon them in detail. However, it is noted that they are inter-related to the consent application.

In comparison of this current consent application to the original consent application, file No. B/011/15SC, it is observed that both are substantively similar to each other.

## **MATTERS IN ISSUE**

The appeal matter being brought before the TLAB is unique in that the COA, while initially approving a substantively similar consent application in 2018, has now acted to refuse the current consent application in 2020. The Appellant has appealed citing this issue and that they had only been required to re-apply due to difficulties which had arisen in satisfying the conditions, as explained by them. The opposing Parties to the matter recognize the unusual circumstances here, but contend, specifically by Participant Mr. McGowan, that the COA had not sufficiently assessed this proposal when it had been brought to them approximately 2 years ago. Mr. McGowan, and City solicitor Romano Ivanov argue that the more recent refusal of this consent was due to a more fulsome appraisal of all relevant issues associated with this proposal. They further state that some of the conditions, which had been recommended with the original consent and have been 'carried over' to this current consent application, are problematic in nature and may not actually be possible to be addressed. They state that the TLAB should take these other extenuating circumstances into consideration in its review of the matter.

The TLAB here must apply a focused analysis of the proposal and make a determination if this re-applied consent application for land severance in this neighbourhood would constitute a proper and orderly form of development or not. This analysis must also give consideration to the criteria for subdivision of land as stipulated in the *Planning Act*. The conditions which had originally formed part of the approval of the original consent would also need to be assessed herein as they are being

suggested to be attached to this current consent application as well. Consideration would also be provided due to the unique circumstances which resulted in the re-application and to the issues which the other parties have raised relating to this consent (severance) proposal.

## **JURISDICTION**

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **Consent – S. 53**

TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " 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 of the Planning Act;
- (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;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;

- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

## **EVIDENCE**

The Hearing commenced with consideration of an email received by the TLAB offices yesterday evening, on February 24, 2021, by Participants Ryan Coughlan and Beverley Wallis indicating they would not be able to attend the Hearing. Ms. Wallis provided a follow up email correspondence indicating that she would actually be able to attend. I indicated that all parties to this matter were issued a Notice of Hearing. As such, they also bear responsibility to properly inform the TLAB regarding potential scheduling issues. As it was only Mr. Coughlan not attending, I indicated we would be proceeding with the hearing.

The Appellants' legal counsel, Amber Stewart, then provided opening statement to the TLAB. She described that this is an appeal relating to a consent (severance) application which had been refused by the COA. This was actually a re-application of the original consent application, submitted and approved in 2018, which had lapsed as its associated conditions were not satisfied within the one year deadline, as stipulated by the *Planning Act*. There are two related minor variance applications, however, those applications are not subject to this appeal as their approval is considered final and binding.

The City solicitor Roman Ivanov made opening statement that he was attending the Hearing as per instructions from City Council. However, City Legal staff took no formal position on the matter but will pose questions and arguments if warranted.

Ms. Stewart proceeded to call expert witness Jonathan Benczkowski to provide testimony. I indicated I had reviewed Mr. Benczkowski's curriculum vitae and indicated he was qualified to provide professional opinion evidence the field of land use planning.

Mr. Benczkowski commenced by describing the subject property as having a split zoning of Residential Detached RD and Open Space-Natural ON zones. The RD zone

covers the front facing portion of the lands and the ON zone is for the rear portion. The ON zone to the rear is more restrictive when it comes to development activity. To properly delineate the portion of lands subject to the ON zone, a land surveyor, accompanied by Toronto and Region Conservation Authority (TRCA) staff, attended the property for a site inspection. The produced survey accurately depicts which portions of land are to be undeveloped.

The 2018 consent application had a series of conditions which had to be met by the Appellant. The reason that re-application of the consent was done was due to the TRCA related conditions which have not been satisfied within the one year timeframe. The TRCA and the Appellant had a preliminary understanding that the rear portion of lands would be conveyed to the TRCA. However, TRCA staff had, as part of their site inspection, found a retaining wall in the rear portion of lands. As such, they were looking to see how they would address this retaining wall issue prior to formal land conveyance.

Mr. Benczkowski referencing comments the TRCA provided for this application in 2018 and noted that they are substantially similar to those provided in 2020 with this re-application.

Mr. Benczkowski then described the study area he had prepared for this severance, as found in his *Expert Witness Statement*. If the proposal was approved, it would result in two new detached dwellings being built. As such, planning legislation such as Official Plan Amendment 320, or OPA 320, would need to be considered. The study area is approximately bounded by Kingston Road to the north, Gradwell Drive to the west, Sunnypoint Crescent to the south, and Dorset Road to the east. On the 'Neighbourhood Study Area' graphic, entered as Exhibit A (*Expert Witness Statement of Jonathan Benczkowski*). Mr. Benczkowski references a portion of land within the RD zone which is not being developed upon. This 'strip' of land, while not part of the ON zone designation, has been determined by TRCA as not being developable. This is outlined by Mr. Benczkowski to explain how elements such as lot area, lot coverage and floor space index (FSI) are calculated for the lands deemed to be 'developable' only.

Ms. Stewart asked what conclusions he had achieved in devising this study area. Mr. Benczkowski responded that his analysis found that there is a diverse grouping of lot sizes within the immediate area context. The lot area of the properties in question here are consistent with the Zoning By-law lot area requirements. In addition, he focused specifically on lots which abutted the ON zone in the rear, similar to the subject property, as part of his analysis. He argues the lots here have similar lot specifications.

Ms. Stewart then asked about the *Provincial Policy Statement (PPS)* and if it is consistent to this subject proposal. Mr. Benczkowski responded that he believes it has with regards to its 'Natural Heritage' provisions. This proposal will meet this due to the land conveyance of the rear lands to the TRCA. Those lands have environmental features, and are in close proximity to the Scarborough Bluffs.

Ms. Stewart then asked about the *Places to Grow Act* and its relation to the subject proposal. Mr. Benczkowski referenced the legislation and its description of complete communities and how there should be lands for park and recreation uses. He

contends that the land conveyance of the rear to TRCA, and installation of a fence, will permit those lands to potentially be allocated for public use.

Ms. Stewart then asked about the Toronto *Official Plan* (OP) and its relation to this proposal. Mr. Benczkowski described the 'Toronto Green Space System and Waterfront' and contends that the land conveyance would contribute to this City-wide green space system.

Ms. Stewart then returned to inquire of Mr. Benczkowski's study area and material on lot area. Mr. Benczkowski did highlight that the proposed lots would meet lot area and lot frontage requirements as per the Zoning By-law. For the lot area, he references his study area graph, of Exhibit A, for lot area, to illustrate that the proposed lots here would have lot area which are the mean (average) of lot areas for existing houses in the surrounding area. He also prepared additional graphics, in Exhibit A, of his *Expert Witness Statement*, to depict developable lot area of properties in the study area. This was done as he believes it would provide a more appropriate assessment criteria to apply to the subject proposal.

Ms. Stewart then asked about the *Planning Act* stipulations as they relate to the subdivision of land per S. 51(24). Mr. Benczkowski then proceeded to outline the 'Criteria for subdivision of land' of the *Planning Act*. He described that on specific provisions within the criteria, that the proposal will conform to the OP and the proposed lots also comply with Zoning By-law requirements.

Mr. Benczkowski's testimony then concluded.

On cross examination by City solicitor Mr. Ivanov, Mr. Benczkowski was asked about, as explained in the disclosure documents, correspondence from the TRCA describing an outstanding violation Order of this subject property as it related to illegal grading work or pertaining to the retaining wall. He inquired about how this was to be addressed by the Appellant. Mr. Benczkowski responded that his client recognizes this issue and is working with the TRCA cooperatively to resolve this violation order. Mr. Ivanov then asked if Mr. Benczkowski can describe the geotechnical issues due to this illegal grading work that had occurred. Mr. Benczkowski responded that while he is not a professional in geotechnical engineering, he has had experience in other land development matters but argues that he does not believe the violation to be significant and that it can be resolved, through the imposition of a condition of approval if the subject consent appeal is granted.

Participant Robert McGowan asked about the term of 'effective lot area' as used by Mr. Benczkowski, which formed part of his testimony, and if it is relevant for consent (severance) applications. Mr. Benczkowski commented that, as stated earlier, the lot area and lot frontage are zoning compliant. He further explained that he used this term as its use here would also result in other elements such as floor space index (FSI) and lot coverage being 'brought down' or having to be assessed as per 'effective lot area' or lands actually developable as opposed to the general lot area definition.

I asked if this subject consent application before the TLAB is substantively similar to the consent application that was filed in 2018. Mr. Benczkowski acknowledged that it

is. He did indicate that there are new COA panel members now which, he argues, resulted in a different decision being rendered. I responded that appeals are, by convention, treated as de novo hearings, where all issues are looked at anew.

Participant Robert McGowan provided testimony to the TLAB. He references the OP and that the term of 'effective lot size/area' is not described therein. For Broadmead Avenue, he argues that the lot sizes of the properties on the north side of the street differ from those of the south side. The north side are interior lots whereas the south side are ravine lots. In addition, and in utilizing OPA 320 for analysis purposes, there is a difference in the 'material' character of these lots, due to differing topographical characteristics. He further argues that the land conveyance to the TRCA was not part of the Appellant's original proposal and they were only proceeding with this due to TRCA 'imposing' it. He further described the TRCA violation Order and that it was due to the Appellant illegally removing the retaining wall. He had initially filed a complaint to the TRCA regarding this.

Ms. Stewart asked if Mr. McGowan believes the lot area, for the proposed lots, would be the average or mean within the defined study area. Mr. McGowan responded he believes that is so. She then asked if he believes the term 'effective lot area' is appropriate to determine what portion of a property can be developed. Mr. McGowan responded that he understood, to a certain extent, the term as used by Mr. Benczkowski. However, he was concerned about distinctions being made between useable and developable land.

Ms. Stewart then referenced the TRCA '*Living Cities*' policy document and where it describes that lands which are zoned Open Space should not be developed upon and be retained in its natural state. She also referenced specific portions of the document where TRCA outlines its objective to secure natural heritage lands through land conveyance, when possible. She asked if he acknowledges these policies. Mr. McGowan responded that he is aware of this policy. However, his concerns here are that the land conveyance is in the mid-block along this street which could create new difficulties to the adjacent properties. It would, in his opinion, be more reasonable for such a land conveyance to be a continuous block of several properties along this street. This would act to alleviate potential issues, such as staff or other persons accessing these conveyed lands which could result in privacy or nuisance issues for the adjacent properties.

Mr. Ivanov asked Mr. McGowan when the retaining wall had been removed. He responded it was in December 2019. Mr. Ivanov asked if he could elaborate on the effects of the retaining wall removal. Mr. McGowan responded that he believes erosion issues have worsened for adjacent properties as a result. He also described that when there is heavy rainfall, it acts to further weaken the soil integrity.

I asked if any of the houses along Broadmead Avenue which were built requiring TRCA approval. Ms. Wallis, on request of Mr. Gowan, responded as she had that information. In her research, she believes only a handful of properties needed TRCA approval in order for their houses to be built.



Participant Beverley Wallis then provided testimony to the TLAB. She described the mid-block of Broadmead Avenue which is a vacant green space that is landscaped regularly. In a series of photographs, she shows that other properties do use the rear portion for outdoor activities, even if it is ON zoned. She then referred to the trees to be planted on the third 'lot', or the lands to be conveyed, and is not sure if this planting plan may have issues.

Ms. Stewart asked if she is aware that tree planting is a requirement of TRCA. Ms. Wallis responded she understand this but is not sure if the ravine feature should extend this far into the properties along Broadmead Avenue.

In closing statement, Ms. Stewart stated that she acknowledges the retaining wall issue which has occurred on the subject property. However, her client is willing to work with the TRCA to address these issues. The proposed lots will have lot frontages and areas which act to meet, or even exceed the standards as stipulated in the Zoning By-law.

Mr. Ivanov provided a closing statement that he is concerned that the TRCA violation order cannot be accommodated within a one-year timeline, as per consent application requirements.

The Hearing was then concluded with no additional evidence provided by the other Parties in attendance.

## **ANALYSIS, FINDINGS, REASONS**

It is noted, as part of the review of this matter, that the Appellant asserts that the consent application which was submitted in 2020 is substantively similar to what had been submitted in 2018. Due to the unique situation of this appeal, the TLAB is providing commentary on this as it is relevant to assessing the proposal. However, I also recognize that this is to be, as per convention, a de novo hearing where all issues are to be heard anew. As such, the discussion which will be presented herein will be analyzing this severance proposal on its merits. I will also assess if the proposed conditions (which are the same as those of the previous 2018 application) should also be included, if this appeal were to be permitted.

As presented by expert witness Mr. Benczkowski, consent (severance) applications are to be assessed in accordance with prescribed policies for subdivision of land, as outlined in the *Planning Act*. It is noted that Plan of Subdivision criteria also applies to consent to sever applications. They are, defined as S. 51(24) of the *Planning Act*, and was referenced earlier in this document.

Mr. Benczkowski provided a detailed appraisal of the proposal in relation to the criteria. Participants, such as Mr. McGowan, also provided testimony to the TLAB which did indirectly reference the criteria as well. Principally, Mr. Benczkowski utilized a study area approach to assess this proposal. It was explained that this approach was proffered to also address issues as per OPA 320, which the City has introduced to further regulate and define in-fill housing in established residential neighbourhoods.

Mr. Benczkowski's testimony provided a clear and rationale assessment on how the subject proposal to create two lots would be consistent with relevant planning legislation and policies. The analysis showed that when assessing these two proposed lots against metrics as they related to lot frontage and building depth, that these lots would be consistent with the overall lotting fabric of this neighbourhood, which would bring it into conformity with criteria A, B, D and F of S. 51(24) of the *Planning Act*. As had been proffered by Mr. Benczkowski, these two lots are consistent with lot area and lot frontage requirements, as per the Zoning By-law. What is being explained here is that the, in his opinion, the lot area and lot frontage issues have been contemplated for within this Zoning By-law. The related variance applications are, in essence, addressing only performance standards to allow for construction of a detached on each respective lot.

With regards to Ms. Stewart contending that the variance applications are a separate issue and should not be considered part of this this appeal, I find that it is only the consent application which has been appealed and brought before me and, as such, would not find it appropriate to engage in a detailed discussion on them. However, it is evident during Mr. Benczkowski's testimony that he does enter into discussion on Zoning By-law standards for the proposed lots. To a certain extent, his testimony demonstrates that zoning matters are relevant to the matter at hand. In addition, the variance applications are for the 2 lots being proposed. As the COA had refused the consent application, it now creates a unique circumstance that those variance applications are, in the interim, not permissible as the subject property does not have an approved land severance.

Mr. McGowan, as part of his testimony, submitted that Mr. Benczkowski's use of 'effective lot area' was a flawed assertion and was seen to not take into account actual 'on the ground' lotting and development patterns. Mr. Benczkowski, under cross examination, did further explain that the term he had used was to describe the portion of lands which are developable. The remainder of the subject lot is not developable as it has environmental features, which affects most of the properties along the southern portion of Broadmead Avenue.

Mr. McGowan presented at the hearing a graphic which he used to argue that the proposed lots would be 'undersized' in their dimensions:

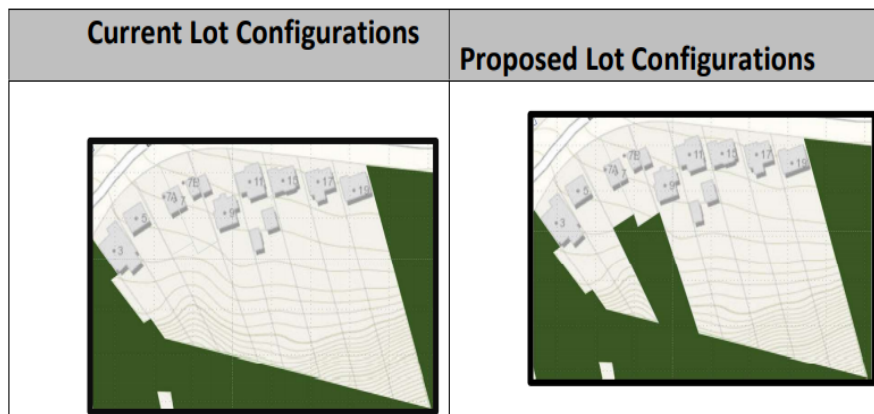


Figure 1: Graphic from Participant Statement of Robert McGowan

The graphic depicts the land conveyance in the rear, which has been agreed upon, in principle, between the Appellant and TRCA. These lands are deemed environmentally sensitive and, as such, the TRCA wants to acquire them into their stewardship. Here, Mr. McGowan argues that this proposed configuration will result in two new lots which would be 'irregularly' shaped in relation to other lots within this immediate neighbourhood context. This statement was made to argue that certain policies, such as OPA 320, would not be in compliance for this proposal. As such, his testimony was, to certain extent, acting to inquire about the intentions of the TRCA recommended conditions and if they are appropriate. Subdivision criteria A and H are essentially being questioned here as Mr. McGowan contends the approach as undertaken by the TRCA towards environmental planning is not truly appreciative of localized conditions.

To provide context to this issue, a graphic as prepared by Mr. Benczkowski is pertinent to examine as well:

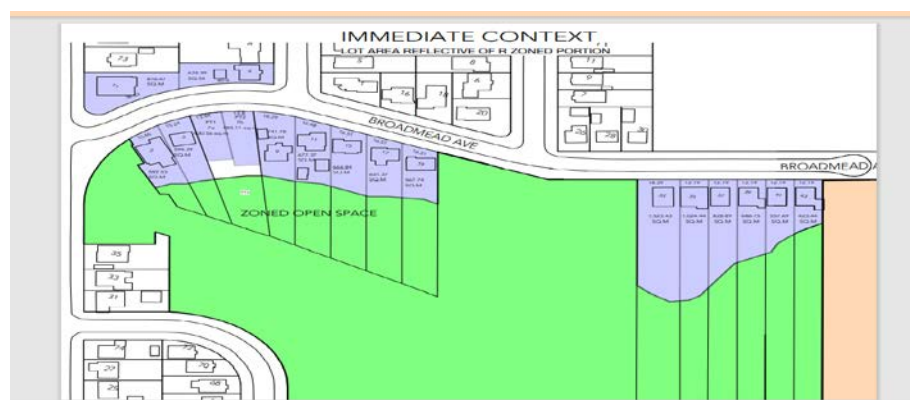


Figure 2: Graphic from Expert Witness Statement of Jonathan Benczkowski

This graphic acts to overlay the ON zone onto all the properties along southern part of Broadmead Avenue. What is notable in this graphic is that illustrates that the

'actual' lotting fabric of the existing lots along this street to be similar in orientation to the 2 lots in question. The other properties along Broadmead Avenue continue to possess their ON zoned lands on the rear portion. What is unique with the subject proposal is that the Appellant is prepared to convey the rear portion of lands to the TRCA. The other adjacent properties have not undertaken such an initiative. The Tribunal would want to comment that it is not within its jurisdiction or scope to discuss the intentions of adjacent property-owners with regards to any potential discussions they may have with the TRCA. However, it is noted that municipal departments and external agencies do sometimes use conditions to secure certain initiatives. Conditions of approval is a 'mechanism' that relates to planning applications. As such, if such an application were submitted, this could be done. While so, it is noted this mechanism is typically used by municipal and external agency staff with discretion.

Mr. Benczkowski's graphic is significant as it acts to reinforce his assertions that the lotting fabric will be compatible with the neighbourhood context, as prescribed in OPA 320. This proposal is also not a pre-mature form of development as the proposed lots dimensions are consistent with Zoning By-law lot frontage and area requirements. As such, the requisite municipal planning documents have contemplated for such a development pattern for this area. In relation to the discussion as proffered on lot frontage and area, it is noted that with severance applications that, in practice, any proposed lots are initially assessed to determine if they comply with lot frontage and area zoning requirements or not. If they do not, they could be characterized as 'undersized' lots and may require additional planning application, such as variance or rezoning, with which additional review of the matter would be undertaken as such.

It is found, and was described by Mr. Benczkowski, that his use of the term 'effective lot area' is not used in the Zoning By-law. However, he has acted to use the term here due to special attributes of this subject property and adjacent properties. The properties on the southern portion of Broadmead Avenue straddle both the Scarborough Bluffs and TRCA regulated area. As such, split zoning is a phenomenon which affects these properties. Mr. Benczkowski's use of this term is seen not as an attempt to mislead the TLAB but to illustrate how the environmental feature which encapsulates these properties has resulted in certain calculations, such as for lot area, to be assessed differently than other properties, notably those on the northern portion of this street. Each property has unique attributes which are not always visible to the naked eye and require additional analysis which has been shown in this appeal.

The City solicitor Roman Ivanov, and had been alluded to by Mr. McGowan, also focused on the consent applications conditions for approval, specifically those as proposed by the TRCA. Both persons described in detail the violation Order which the subject property had been served by the TRCA due to illegal activity involving partial removal of the retaining wall in the rear of the property. It is their contention that this violation Order, and the need to satisfy it, should not have been proposed as a condition by the TRCA. Moreover, they raise concern that if the TLAB did approval this appeal, that an additional one year timeframe may still not be sufficient time to redress the issues for this site.

The TRCA memorandum, dated July 3, 2020, was provided to comment on the 2020 consent application. The TRCA planner who reviewed this matter provided

substantively similar comments as those for the 2018 consent application. The Appellant is now recommending that the TRCA conditions, along with other standard conditions typically attached to consent applications, be included if the TLAB elected to allow this appeal.

I would find it necessary to re-iterate that the TLAB is required to assess appeals brought before it in accordance with established policies and legislation. Here, consent (severance) applications are to be assessed as per S. 51(24) of the *Planning Act*, as dictated by the law. The criteria as contained in this section of the *Planning Act* requires the decision-maker in question to determine if the severance, or subdivision of land, meets certain requirements such as appropriate form of development, acts to conform with requisite planning policy documents, proper servicing is available to the site and protection of environmental features and conveyance of land to public authorities (if necessary). It does not contain instructions relating to re-application to allow for extended timeframe to address conditions. As such, it would not be appropriate to engage in such deliberations.

In relation to the above-noted issue, it is noted that Planning staff did not raise any objections to this consent application. Furthermore, other municipal departments, while providing comments and proposing conditions, did not implicitly provide opposition to this application. The TRCA also did not express objections and also proposed conditions for possible approval. It could be surmised here that criteria H and K of S. 51(24) of the *Planning Act* are being accounted for as the TRCA, through conditions of approval, is attempting a land conveyance of environmental lands to the stewardship of the TRCA. This would be consistent with provisions of the *Planning Act*, and also with the TRCA's own policies, as enshrined in its *Living Cities Policies*, which provide a framework for the TRCA's long-term objectives and operations and was proffered by Ms. Stewart during the hearing.

With the evidentiary material that has been presented to me, I find that the arguments as advanced by Ms. Stewart and Mr. Benczkowski to be rationale and compelling. Their testimony and presentations to the TLAB have concretely demonstrated that the prescribed criteria, as per S. 51(24) of the *Planning Act*, will be met and that the subdivision of land being proposed here will not adversely impact the neighbourhood character. In terms of servicing, the testimony presented demonstrated that the inclusion of an additional lot, and its to be constructed dwelling, will not constrain municipal services. For school services, there is Fairmount Public School which is within walking distance to the subject property. It was also demonstrated that some other criteria for subdivision of land, such as if the proposal required site plan approval, or criteria M, were not relevant to this proposal.

As has been referenced in several instances of this document, this is essentially a re-application for a consent (severance) as the conditions had not been met as part of the 2018 consent application. The TLAB recognizes this but has conducted its assessment of this matter only in accordance with the requirements as stipulated in the *Planning Act*, and as a de novo hearing in accordance with established procedures. Mr. Benczkowski has stated that it was only the TRCA related conditions which had not yet been met. The approval to be provided herein will adopt the conditions which had been recommended by municipal and TRCA staff, and also which were presented by the

Appellant's representatives to the TLAB. However, and as the practice of municipal staff, previously addressed conditions in 2018 will be 'carried over' to this current consent application. Those conditions would then be cleared again by municipal staff. While so, it would only be the TRCA conditions which need to be addressed. The Appellant contends that this one year timeframe, which this appeal approval will enable, will be sufficient time to address said conditions. It is noted that the condition wording herein may differ slightly from those as contained with the 2018 consent approval. This is partly due to *TLAB Practice Direction 1: Standard Consent Conditions* which was passed in February 2020. This acted to update the standard conditions attached to consent applications, and was done in consultation with City staff. However, the overall underlying intent of the conditions remains similar.

It is noted that municipal and TRCA staff have not provided comments indicating otherwise regarding potential issues with the clearance of conditions. I recognize that the City solicitor was in attendance and raised concerns about the TRCA violation Order. While respecting his concerns, the formal comments from the TRCA indicate that the violation Order will be addressed as a condition of approval. I would find that the TRCA would have committed their due diligence in making this determination. It is further noted that planning applications, such as a consent (severance), when filed must pay an application fee, be subject to staff review, and decision made on the matter by a relevant body such as COA or City Council. The Appellant has proceeded with this new consent application acting in good faith that they intend to address all conditions at this instance. If this were not to be accomplished, the consent approval will lapse. Any other potential re-application again would be subject to the above-noted process which could act to address any issues with this proposal in a dispassionate and factual manner.

## **DECISION AND ORDER**

I approve the consent requested. The earlier decision of the COA, for the consent application, is set aside.

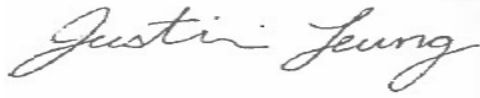
This approval is also in accordance with the site plan, contained herein as Attachment 1.

## **CONDITIONS OF CONSENT APPROVAL**

- (1) Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an Applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official as outlined in Condition 6.
- (2) Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable registered reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.

- (3) One electronic copy of the registered reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.
- (4) One electronic copy of the registered reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (5) Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.
- (6) Once all of the other conditions have been satisfied, the Applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.
- (7) Within ONE YEAR of the date of the giving of this notice of decision, the Applicant shall comply with the above-noted conditions.
- (8) The owner shall resolve violation for grading works completed on 7 Broadmead Avenue without a TRCA permit. The owner is required to work with our enforcement staff to resolve the violation. A letter of conformance from Cambium (geotechnical engineer) outlining that grading works have been completed as per the recommendations from their report dated November 27, 2019 is required;
- (9) The owner shall apply for and receive a TRCA Permit under Ontario Regulation 166/06 prior to carrying out any site grading or construction within the regulated areas of Part 1 and 2;
- (10) The owner shall convey to TRCA nominal sum, Part 3 as shown on the Applicant's preliminary draft plan prepared by A. Aziz Surveyors Inc., dated August 14, 2018;
- (11) The owner shall confirm that Part 3 be free and clear of any encumbrances before being conveyed into public ownership;
- (12) The owner shall install fencing to satisfaction of City of Toronto, Parks, Forestry and Recreation Division;
- (13) The owner shall submit and implement a planting plan for Part 3 to satisfaction of City of Toronto (Ravie and Natural Feature Protection) and the TRCA prior to conveyance of Part 3 into public ownership.
- (14) The owner shall obtain Final and Binding Decisions on minor variance applications A058/15SC and A059/15C, to the satisfaction of Deputy Secretary-Treasurer, Committee of Adjustment, Scarborough Panel.

X

A handwritten signature in cursive script that reads "Justin Leung". The signature is written in black ink on a light-colored background.

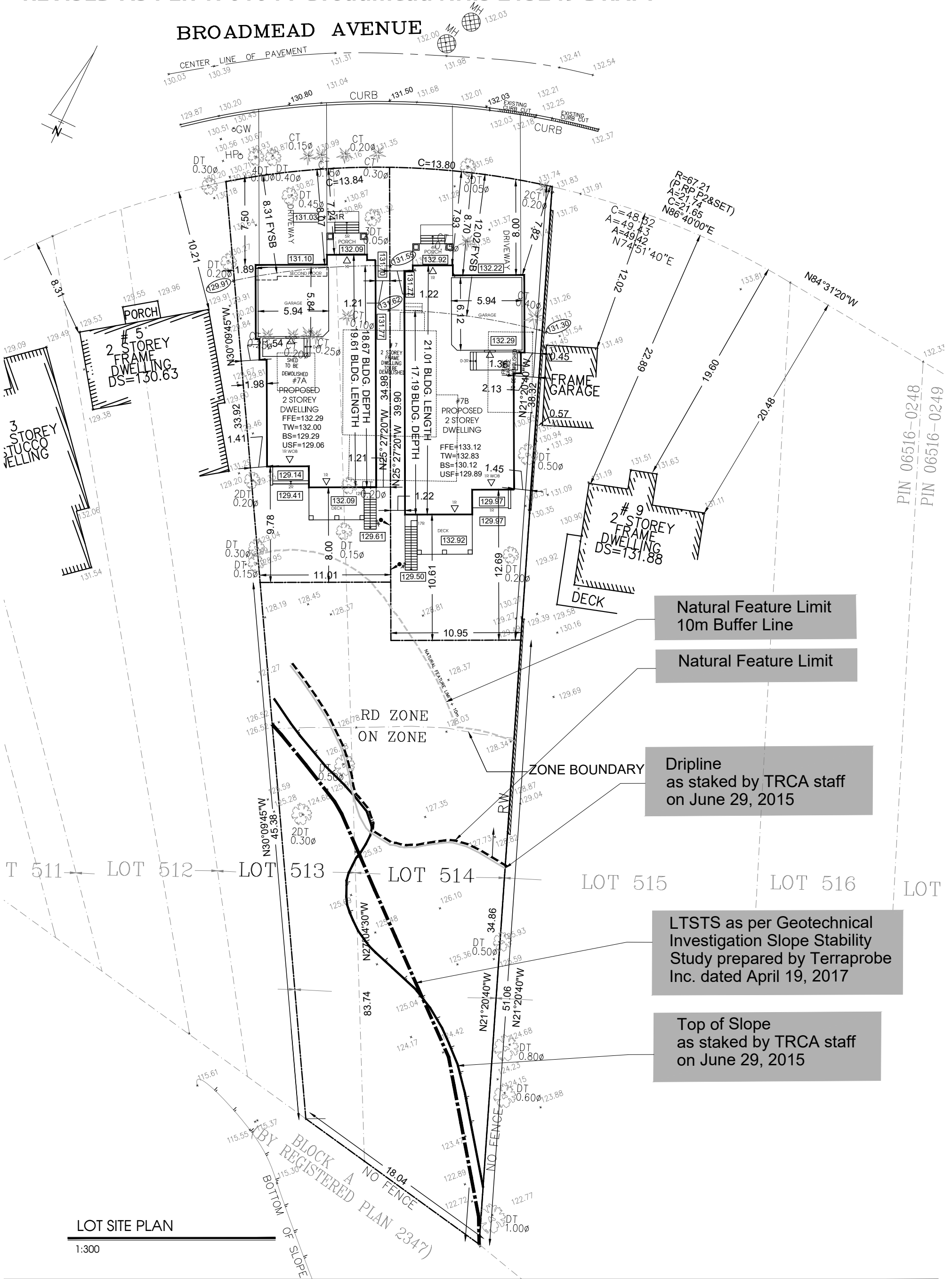
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Justin Leung  
Panel Chair, Toronto Local Appeal Body



REVISED AS PER 170104 7 Broadmead NHIS 215249 DRAFT

BROADMEAD AVENUE



LOT SITE PLAN

1:300



tel: 905-240-4024 fax: 905-240-4019  
arcdesign@rogers.com

**Model**  
**Client**  
**7 BROADMEAD ST.**  
**TORONTO, ONTARIO**

THESE DRAWINGS ARE NOT TO BE SCALED. ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR PRIOR TO COMMENCEMENT OF ANY WORK. ANY DISCREPANCIES MUST BE REPORTED DIRECTLY TO ARC DESIGN GROUP DEVELOPMENT SERVICES LTD.

6.	REVISED LOTS	05.23.18	AL
5.	#7A - REDUCED DEPTH	JAN 24	JE
4.	REVISED AS PER 170104 7 Broadmead NHIS 215249 DRAFT	SEPT '14	JE
3.	#7A - REDUCED DEPTH	MAR '17	PJ
2.	TOP OF SLOPE SETBACK, REV. PER DRAFT PLAN	MAR 16	PJ
No.	Description	Date	By
I, PETER JARUCZIK DECLARE THAT I HAVE REVIEWED AND TAKE DESIGN RESPONSIBILITY FOR THE DESIGN WORK ON BEHALF OF ARC DESIGN GROUP DEVELOPMENT SERVICES LTD. UNDER DIVISION C, PART 3, SUBSECTION 3.2.4. OF THE BUILDING CODE. I AM QUALIFIED, AND THE FIRM IS REGISTERED, IN THE APPROPRIATE CLASSES/CATEGORIES.			
Qualified Designer BCIN:	32051	Signature:	<i>[Signature]</i>
Firm BCIN:	35536	Date:	JAN 2018

<b>Sheet Title</b>	
PROPOSED SITE PLAN	
<b>Project No.</b>	<b>Drawing No.</b>
15-005-01	SP
<b>Scale</b>	<b>Date</b>
1:300	MAY '18
<b>Drawn by</b>	<b>Checked by</b>
JE	PJ