

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 07, 2017

CASE NO(S): MM170001

PROCEEDING COMMENCED UNDER subsection 22(6.2) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Request by: ClubLink Corporation ULC, ClubLink Holdings Limited
Request for: Motion for directions to determine the completeness of an application
Municipality: Town of Oakville
OMB Case No.: MM170001
OMB File No.: MM170001
OMB Case Name: ClubLink Corporation ULC v. Oakville (Town)

PROCEEDING COMMENCED UNDER subsection 34(10.5) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Request by: ClubLink Corporation ULC, ClubLink Holdings Limited
Request for: Motion for directions to determine the completeness of an application
Municipality: Town of Oakville
OMB Case No.: MM170001
OMB File No.: MM170002

PROCEEDING COMMENCED UNDER subsection 51(19.2) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Request by: ClubLink Corporation ULC, ClubLink Holdings Limited
Request for: Motion for directions to determine the completeness of an application
Municipality: Town of Oakville
OMB Case No.: MM170001
OMB File No.: MM170003

Heard: March 28, 2017 in Oakville, Ontario

APPEARANCES:

Parties

ClubLink Holdings Limited and
ClubLink Corporation ULC
("ClubLink")

Town of Oakville ("Town")

Counsel

Mark Flowers
Kate Fairbrother

Robert Howe
Catherine Lyons
Joseph Hoffman

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE BOARD

INTRODUCTION

[1] ClubLink brought a motion for determination of 'completeness' of applications filed with the Town to amend the Official Plan and the Zoning By-law, and to permit the subdivision of the lands commonly known as the Glen Abbey Golf Course. Concurrent with requesting a finding of completeness, ClubLink takes the position and argues that the date of completeness is the date of submission to the Town should the Board find in the affirmative for ClubLink.

Context

[2] The 92.72 hectare site is located within the south-east quadrant of Upper Middle Road West and Dorval Drive, and currently is home to Glen Abbey Golf Course and the RayDor Estate office building. The Raydor Estate is in active use and is not included in the application.

[3] ClubLink proposes to redevelop the tableland portion of the site for a mixed use residential and commercial, parks and open space, and natural heritage neighbourhood.

[4] A total of 3,222 residential units in a range of housing forms are proposed together with 5,429 square metres of office commercial and 5,841 square metres of retail commercial space, in combination with community amenity uses, including parks, open space, natural heritage system, wooded areas and buffers.

[5] The proposal was the subject of the requisite pre-consultation meeting hosted by the Town and included representation from the Region of Halton (“Region”) and other commenting approval agencies.

THE ISSUES

‘Completeness’

[6] ClubLink contends that they have provided all of the materials prescribed by statute and in accordance with the Official Plan, the regulations, and to **the extent reasonable**, those set out in Schedule A to the executed Pre-Consultation Form, and associated terms of reference specifically provided on the Town’s website to guide the production of supporting analyses.

[7] The Town argues to the contrary, that ClubLink has failed to submit analysis to address the following three areas:

- a) an assessment of the impact of the proposed redevelopment on the Urban Structure of the Town, and in particular in respect of the Town’s Growth Areas;
- b) an analysis of the economic impact of the loss of the Glen Abbey Golf Course on the Town: and
- c) a draft official plan amendment containing an area specific plan or policies for the proposed redevelopment of the Glen Abbey Course lands, as required by section 77 (5) of the Region’s Official Plan, and a land use planning analysis addressing the criteria set out in that policy;

The Town relies upon the provision of the *Planning Act* and s. 28.16 of the Official Plan, which allows municipal council (“Council”) to require “any other supporting information and materials...” as being relevant and necessary to the evaluation of a particular application.”

[8] The Town contends that the analyses, enumerated above and said to be missing, is required in order to allow the Town to come to an ‘informed’ decision on the ClubLink application.

Effective date of ‘Completeness’

[9] ClubLink requests that should the Board grant its motion and find the applications to be ‘complete’, that the Board’s Order should direct the Town to accept the applications to have been complete as of the date they were filed with the Town.

[10] The Town counters and argues that ClubLink’s appeal rights under the *Planning Act* should be crystalized on the date of a Board order requiring the Town to accept the applications as complete.

ANNOTATED CHRONOLGY

October 23, 2015	Pre-consult request submission made to Town by ClubLink.
November 2, 2015	Site walk with representatives of ClubLink, staff of the Town, Region, and Conservation Halton.
November 18, 2015	Pre-consult meeting attended by a contingent of 31 individuals representing the Town, Region, Conservation authority, the School Boards and ClubLink executives and multidisciplinary consulting team. The meeting concluded with the execution of Pre-consultation form (“agreement”).
December/January, 2016	Various meetings between ClubLink representatives

	and Town staff to perfect Terms of Reference (“TOR”) for various studies to accompany applications with a view to complete TOR by January 31.
January 28, 2016	Staff report recommending that Council pass an Interim control By-law (“ICBL”) to restrict the lands to the existing uses for a period of one year.
February 1, 2016	By-law 2016-024 the ICBL passed restricting use of subject lands to their existing uses pending the completion of the following Town-initiated studies: <ul style="list-style-type: none"> (i) Urban Structure review; (ii) a Land Use Economic and Impact Analysis study; and (iii) a Cultural Heritage Landscapes Assessment of the subject Lands. <p>The same Council resolution allocated funds for the Urban Structure review and Land Use Economic and Impact analysis and single sources a consulting firm for the Urban Structure review.</p> <p>The firm of Macauley Shiome Howson was retained to carry out the Urban Structure review.</p> <p>Letourneau Heritage Consulting Inc. is retained to carry out the Glen Abbey Cultural heritage Evaluation.</p>
June 22, 2016	The firm of Price Waterhouse is retained to undertake the Land Use Economic and Impact analysis, the work programme outlined in the engagement letter of June 13, 2016 projects an October 31, 2016 completion date.
August 17, 2016	Correspondence from ClubLink planning consultant to the Town enquiring if a new pre-consultation agreement is required, citing Note d) of the form which states that an executed form expires within 6 months from the date of signing, or at the discretion of

- the Director of Planning (Original form was executed on November 18, 2015).
- September 7, 2016 Response from Town advises that agreement expired on May 18 and elaborates that given the ongoing status of the studies provided for in the ICBL, 'any applications affecting the subject lands that come forward would be considered incomplete'.
- November 1, 2016 Council approves ICBL extension for 1 year to January 31, 2018 on the basis that the three studies are not yet complete.
- November 10, 2016 ClubLink submits applications for Official Plan amendment, Zoning By-law amendment, and Draft Plan of Subdivision together with 42 documents, reports and studies accompanied with the application fees.
- December 8, 2016 In accordance with s. 34(10.4) of the *Planning Act*, the Town advises ClubLink that the applications are incomplete, referencing the September 7, 2016 correspondence, and re-iterating that the Town initiated "studies are not yet complete and are important for the Town to properly understand the policy context for any redevelopment proposal with respect to these lands.... In addition it is also necessary to allow time for any associated implementation tools to be put into effect before an application affecting the subject lands can be considered."

ANALYSIS AND FINDINGS

Missing Information

[11] Without having to hear evidence to the effect, there is no dispute that there are likely significant benefits accruing to the Town from Glen Abbey hosting the Canadian Open and other prestigious tournaments, and operating a world renowned golf club and course. The attraction, the prestige and associated financial spinoffs play a role in the overall economy and branding of the Town.

[12] The potential cessation of the operation of the golf course, and the loss of the associated financial benefits flowing to the Town, should for obvious reasons be a matter of concern to the administration of the Town.

[13] The importance was acknowledged when the future possibility was openly disclosed by ClubLink. Council took a deep breath, passed an ICBL and allocated \$300,000 for outside experts to advise the Town through an Urban Structure review, the Price WaterHouse ("PWC") analysis of the Economic Impact of the loss of the existing and potential Glen Abbey full build out of the operations as currently permitted by the Official Plan, and the Cultural Heritage Landscape assessment of the Glen Abbey Golf Course.

[14] The Board does not accept the Town's position that if ClubLink does not want to wait until the Town's commissioned studies are completed and implemented, that ClubLink must undertake and submit such analysis in support of their applications. The Board finds it unreasonable to require an applicant to carry out studies which both Town staff and Council have determined to be within the Town's mandate and responsibility to independently commission in order to make informed decisions on any applications concerning the ClubLink lands. It is up to Council to be the guardian of the public interest, not individual applicants, irrespective of the scale of a proposal. The fact that all of the studies are well underway and perhaps even overdue, further buttresses the Board's finding that the Town's position is not reasonable.

[15] In the same vein, the Board does not find it reasonable for the Town to determine applications otherwise constructed and supported by analysis in accordance with the general specifications of the Town to be “considered no further and deemed incomplete” until such time as Council implements whatever recommendations flow from the three studies commissioned pursuant to the ICBL.

[16] With one exception regarding a provision in the Regional Official Plan, which will be dealt with separately, there was no dispute argued before the Board with respect to the ‘completeness’ of materials submitted. The dispute lies only with what the Town asserts is missing or not yet complete by their own consultants.

[17] The provisions of s. 38 of the Act do not authorize an approval authority to void or suspend the other rights of an applicant which are entrenched in s. 22, 34 and 51, in this case, while awaiting the outcome of the ICBL studies. The powers of s. 38 preclude or constrain the mandamus order of the issuance of a building permit to permit the furtherance of forms of development which have been determined in the rationale supporting the specific ICBL, to not be in the public interest at the time.

[18] The ICBL powers are not intended to be used to frustrate an applicant from attempting to perfect applications. The Board finds the Town’s approach with respect to putting the pre-consultation on hold is contrary to the intent of By-law No. 2007-106 which specifically authorizes the Director of Planning Services or designate to: “identify the information and materials necessary to the processing of each application,...b) during the processing of applications in cases where such information and materials cannot reasonably be provided at the time of the initial submission.”

[19] The Board notes that the applications were made after the October 31, 2016 completion date set out in the PWC letter of engagement. Given that the ICBL affects only the Glen Abbey Lands, an observer might think that the discretion afforded to the Director of Planning Services could have been the more constructive course to follow, particularly if the external consulting expertise is informing their respective recommendations based on an understanding of the applications and supporting

analysis as submitted by ClubLink, but rendered void of any formal status with the Town.

[20] The Town also takes the position with respect to the missing matters referred to in para. 16 of this decision, that ClubLink has failed to submit a draft official plan amendment containing an area specific plan or policies for the proposed redevelopment of the Glen Abbey Golf Course, as required by s. 77(5) of the Regional Official Plan, and a land use analysis addressing the criteria set out in the policy.

[21] ClubLink counters as follows in para. 17-22, Exhibit 4, the reply affidavit of ClubLink's planner:

- 17. ClubLink's OPA application does not propose an amendment to the ROP to identify the Subject lands as an Intensification Area and Regional staff has confirmed that an amendment to the ROP is not required for the Proposed redevelopment.*
- 18. Based on the above, it is my opinion that the proposed Redevelopment does not constitute a new intensification Area under the terms of the ROP.*
- 19. Policy 77(5) of the ROP requires local municipalities to prepare Area Specific Plans or policies for major growth areas, including the development or redevelopment of communities. Such plans or policies are to include 18 components listed as (a)-(q).*
- 20. The term "major growth areas" is not defined in the ROP, but policy 77(5) states "the area may contain solely employment lands without residential uses or solely an Intensification area."*
- 21. As indicated above, it is my opinion that the proposed redevelopment does not constitute an Intensification Area. It also does not constitute the "redevelopment of a community", rather it constitutes the proposed redevelopment of one property, albeit a relatively large property, within an existing community (i.e., the Glen abbey community). As such, it is my opinion that Policy 77(5) of the ROP does not apply to the Proposed Redevelopment.*
- 22. Notwithstanding this, the PJR addresses the various items listed in Policy 77(5) applicable to the Proposed Redevelopment".....which goes on to cross reference the components to the Sections of the submitted PJR.*

[22] The matter of OP conformity, other than with respect to s. 28.17, is not before the

Board as part of this motion and the Board relies upon the tested affiant evidence of ClubLink's planner who states that the position of the Region is that no amendment to the Regional Official Plan is required.

[23] This comfort is supported by the reference to s. 77 (5) in the now lapsed Pre-consultation agreement that conformity with the Regional Official Plan is confirmed by a check mark, followed by a qualifier that "criteria for new community must be satisfied".

[24] The Board therefore accepts ClubLink's position that the requirement for this information is unreasonable and therefore not missing. Consideration of the prescribed criteria is however addressed in the Planning Justification Report, and therefore satisfied in accordance with the lapsed agreement.

[25] If during the processing of the applications, the Town is not persuaded by the opinion, planning approach and interpretation of ClubLink, as supported by the Region, or if the implementation of the Urban Structure review currently under way changes the current designation of the Glen Abbey lands, the Regional Official Plan puts the onus on the local municipality, not the applicant to prepare Area-specific Plans or policies for major growth areas.

SUMMARY

[26] In summary the Board finds that it is inappropriate and unnecessary and therefore unreasonable for the Town to require ClubLink to replicate studies which the Town has appropriately commissioned to inform Council decisions on issues much broader than the disposition of the Glen Abbey site, or which the Regional Official Plan requires to be advanced by the local municipality should there be a determination that an amendment is required.

[27] The requirement is also found to be unreasonable because the Town cannot control whether the lands will continue to host the Canadian Open and or any of the other tournaments or activities currently hosted at the site. Perhaps more importantly,

the scope of work required of PWC also requires the Economic Assessment to quantify the hypothetical future potential benefits of the full build-out of the golf course as permitted by the official plan and zoning by-law. It is not considered reasonable pursuant to the *Planning Act* to require an applicant to quantify the potential loss of current or projected qualitative and/or quantitative benefits to the approval authority. The standard financial considerations of market, financial and capital impact assessments are not foundational to determination of good planning, but are used to inform conditions of approval should the project be deemed to have merit.

Determining the Date of ‘completeness’ where Dispute

[28] The facts that the Glen Abbey site is one large consolidated operation and land holding, and is the only property subject of the ICBL, create practical considerations that are not determinative to the disagreement of crystalizing appeal dates which flow from the ‘complete date’, but are none the less, reality.

[29] The ICBL will expire January 31, 2018, at which time the Town will have had more than two years from the initial pre-consultation presentation of the concept proposal, to inform itself through internal expertise and external professional and public consultation. This analysis, together with the herein deemed complete submissions of ClubLink, will allow representatives of the various departments and agencies involved in application review to engage in constructive discussions and to render the necessary recommendations.

[30] ClubLink took the Board to *Top of the Tree Developments Inc., Re, 2007 CarswellOnt 7921, [2007] O.M.B.D. No.116, (“Top of the Tree”)* to argue their position that once the Board found the application to be complete, it must therefore be deemed to be complete as of the day of its filing with the municipality. In that case, the municipality had not yet adopted the requisite Official Plan policies prescribing supporting materials for applications, thereby having no legal basis for requiring the requested supporting analysis, and the case is therefore distinguished and not on point in this matter.

[31] *Top of the Tree* does however provide obiter relevant to the matter at hand when that panel of the Board stated that “to gain a head start is not necessarily the most strategic way to launch a successful application.”

[32] While the Board finds the Town’s position unreasonable that ClubLink should provide the economic impact assessment of land uses that have never been fully realized and which the Town cannot compel ClubLink to continue, never mind build out in full, the Board understands how having the preliminary analysis of the Urban Structures working hand in hand with the knowledge of the potential redevelopment of the Glen Abbey site, will assist staff in formulating recommendations with respect to the potential redevelopment of the golf course. This opportunity was available to the Town.

[33] This practicality aside, the Board finds that in this matter, s. 22(6.4), 34(10.7) and 51 (19.4) of the Act govern, and provide that:

within 15 days after council gives affirmative notice under subsection 22(6.1), 34(10.4) or 51(19.1), *(response re completeness of request or application)* or within 15 days after the Municipal Board advises the clerk of its affirmative decision under subsection (6.4), (or 10.5, or 19.4) council shall: give the prescribed persons and public bodies, in the prescribed manner, notice of the application.

[34] The intent of the Act, although not explicit on its face, is clear in the mind of the writer that informing the public of any and all proposals formally initiates the obligations of council and the concomitant rights of applicants. Therefore in the case of a dispute, the determination of completeness flows from the Board’s authority to direct the municipality to accept and process the submissions as complete and inform the public at large accordingly.

[35] Having made this ruling, the Board is very mindful of the delay where disputes must come before the Board. The thoughtful intent of Bill 51 and the official plan amendments that flowed therefrom across the province were intended to assist decision makers in making the best informed and timely decisions in accordance with timelines otherwise prescribed under the *Act*. Invoking unreasonable requirements should not be

used to thwart the purpose, intent and the rights established in the *Act*.

[36] When the appeal rights vest at the outside date 180 days from the issuance of this Order, the ICBL will have lapsed and the Town and ClubLink will have had the opportunity to have had discussions informed by the work undertaken pursuant to the ICBL.

[37] The appeal rights can be exercised if necessary, and the merits of the request and applications will be tested against the in force policies and provisions as of the date of this Order.

[37] ClubLink has included a request in the Motion Record for an awarding of costs against the Town. Should ClubLink elect to pursue this course of action, pursuant to s. 11.5 of the *Statutory Powers of Procedures Act*, Clublink shall do so in writing in accordance with the Board's rules.

ORDER

[38] The Board finds that ClubLink has provided the Town with the prescribed information and material required in accordance with ss. 22(4), 34(10.1) and 51(17).

[39] The Board orders the Town to accept the applications filed on November 10, 2016 as complete as of the date of this Order, pursuant to ss. 22(6.2)(a), 34(10.5)(a) and 51(19)(a) and finds that the request for ClubLink to submit the studies referred to in para. 1, Tab 3 of Exhibit 3, the Town's Responding Motion Record and set out in par. 7 of this decision, to be unreasonable pursuant to ss. 22(6.2)(b), 34(10.5)(b), and 51(19.2)(b) of the *Act*.

"Sharyn Vincent"

SHARYN VINCENT
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.

Ontario Municipal Board

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