

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

17-240-LPAT-03



ISSUE DATE: August 04, 2020

CASE NO(S): PL171450

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1826210 Ontario Inc.
Appellant: Centurion (Dundas) Holdings Ltd.
Appellant: Marz Homes Holdings Inc.
Appellant: Ministry of Municipal Affairs; and others
Subject: Proposed Official Plan Amendment No. 69
Municipality: City of Hamilton
OMB Case No.: PL171450
OMB File No.: PL171450
OMB Case Name: Centurion (Dundas) Holdings Ltd. v. Hamilton (City)

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

Appellant: 1804487 Ontario Inc.
Appellant: 1826210 Ontario Inc.
Appellant: 2294643 Ontario Inc.
Appellant: 2531083 Ontario Inc.; and others
Subject: By-law No. 17-240
Municipality: City of Hamilton
OMB Case No.: PL171450
OMB File No.: PL171451

PROCEEDING COMMENCED UNDER subsection 31(2) of the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sched. 1

Motion By: John Bruce Robinson
Construction Limited
Purpose of Motion: Request for Determination

Appellant: 1826210 Ontario Inc.
 Centurion (Dundas) Holdings Ltd. Marz Homes
 Holdings Inc.
 Ministry of Municipal Affairs; and others

Subject: Directions
 Municipality: City of Hamilton
 LPAT Case No.: PL171450
 LPAT File No.: PL171450
 LPAT Case Name: Centurion (Dundas) Holdings Ltd. v. Hamilton
 (City)

Heard: July 24, 2020 in writing

APPEARANCES:

Parties

John Bruce Robinson Construction
 Limited

City of Hamilton

Counsel

Nancy Smith and Jennifer Meader

Patrick MacDonald

DECISION DELIVERED BY DAVID BROWN AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The City of Hamilton (the "City") passed Zoning By-law No. 17-240 ("ZBL") on November 8, 2017 to amend the City Zoning By-law No. 05-200 to add eight new commercial and mixed use zones and one utility zone, including definitions, general provisions, parking requirements, special exceptions, holding provisions, and site specific Council directed motions for lands within the Urban Area of the City. The effect of the ZBL is to establish consistent zones for commercial and mixed use areas across the City.

[2] John Bruce Robinson Construction Limited ("JBR") owns lands located at 2506 and 2520 Regional Road 56 (the "Subject Lands") which are subject to the provisions of the ZBL. JBR is satisfied with the ZBL regulations as they apply to the Subject Lands and did not file an appeal to the ZBL.

[3] The ZBL is subject to various appeals which have not been resolved and therefore, is not currently in force and effect as it applies to the Subject Lands.

[4] JBR is proposing to develop the Subject Lands with a shopping centre comprised of three separate buildings: a restaurant with associated convenience store and gas bar, a single storey retail building, and a five-bay coin operated car wash.

[5] The City granted JBR conditional site plan approval for the proposed development on June 5, 2019.

[6] JBR filed a Motion requesting that the Tribunal issue an Order that the ZBL is in force and effect and that the ZBL is to deemed to have come in to force on the day it was passed in respect to the Subject Lands. The Motion also requests that JBR be granted Party status in these proceedings for the purpose of bringing the Motion.

[7] The Tribunal received and reviewed the Notice of Motion from JBR (the "Motion") and received and reviewed a Notice of Response to Motion from the City (the "Response") which is not opposing the Motion. The Tribunal received no further responses to the Motion.

[8] The Tribunal, in consideration of the materials filed in support of the Motion and the Response, grants JBR Party status in these proceedings for the purpose of bringing the Motion, Orders the partial approval of the ZBL as it applies to the Subject Lands, deems the ZBL to have come into force on the day the by-law was passed, and that the Order is without prejudice to the outstanding appeals of the ZBL and the positions the Parties may take on those appeals for the reasons that follow.

THE MOTION

[9] JBR filed a Motion with the Tribunal requesting:

1. An Order of the Tribunal pursuant to section 34(31) of the *Planning Act*, R.S.O. 1990, c. P13 (the "Act"), that Zoning By-law No. 17-240 is in force

and effect and deemed to have come in to force on the day it was passed in respect of the Subject Lands and that such Order is without prejudice to the appeals of the ZBL and the positions the Parties may take on the appeals, and

2. An Order of the Tribunal granting JBR Party status in these proceedings for the purpose of bringing the Motion, which status shall be administratively withdrawn by the Tribunal upon granting the relief sought.

[10] JBR served the Notice of Motion to all the parties to this proceeding in accordance with the direction provided by the Tribunal. The City was the only Party to file a response with the Tribunal.

[11] Ms. Smith explained that the City passed the ZBL on November 8, 2017 to amend the City Zoning By-law No. 05-200. The ZBL is subject to various appeals which remain unresolved and as a result the ZBL is not currently in force and effect. The regulations of the ZBL apply to the Subject Lands. Ms. Smith advised that JBR did not object to the ZBL and therefore did not appeal the ZBL.

[12] Ms. Smith advised that JBR is proposing to develop the Subject Lands with a shopping centre development comprised of three separate buildings: a restaurant with associated convenience store and gas bar, a single storey retail building, and a five-bay coin operated car wash. JBR has received a conditional Site Plan Approval from the City in respect of the Subject Lands on June 5, 2019.

[13] Ms. Smith explained that JBR would like to move forward with their development as soon as possible. Given the uncertainty of the timing of the ZBL coming into force in connection with the resolution of the multiple appeals, JBR filed an Application for Minor Variance with the City to secure relief from the current in force zoning provisions for the Subject Lands. She explained that, notwithstanding the City staff support of the application before the Committee of Adjustment ("CofA"), the request was denied by the CofA. JBR has filed an appeal of the CofA decision.

[14] With respect to the request to grant Party status, Ms. Smith submitted that JBR has a direct and immediate interest in these proceedings that could not have been foreseen at the time of the ZBL appeal period. Ms. Smith submitted that the approval of part of the ZBL as it applies to the Subject Lands would constitute the most efficient use of the Tribunal's resources and would avoid a costly hearing on outdated City regulations in respect of the CofA appeal.

[15] In support of the Motion, Stephen Fraser, a qualified Land Use Planner, provided an Affidavit outlining his opinion in support of the Motion.

[16] Mr. Fraser set out that the Subject Lands are designated District Commercial in the Urban Hamilton Official Plan ("UHOP") and the Binbrook Village Secondary Plan. The Subject Lands are zoned General Commercial (C3) and C3-230 in the former Glanbrook Zoning By-law No. 464. The Subject Lands are zoned District Commercial (C6) in the City Zoning By-law No. 05-200 and subject to Exceptions 337 and 570.

[17] Mr. Fraser referenced the City Staff Report attached as Exhibit H to the Motion and offered his concurrence with the recommendations and analysis in respect of the approval of the ZBL. He submitted that the ZBL, as it applies to the Subject Lands: conforms to the Growth Plan for the Greater Golden Horseshoe, 2017 ("2017 Growth Plan"), is consistent with the Provincial Policy Statement, 2014 ("2014 PPS"), and conforms to and implements the UHOP District Commercial designation on the Subject Lands.

[18] Mr. Fraser reviewed the ZBL in the context of the A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 ("2019 Growth Plan") noting that the 2019 Growth Plan came into effect after the ZBL was passed, however it is required that the ZBL conform to the 2019 Growth Plan. He opined that the ZBL conforms to the 2019 Growth Plan for the same reasons it conforms to the 2017 Growth Plan.

[19] Mr. Fraser opined that the approval of the ZBL, as it applies to the Subject Lands, has regard for the matters of provincial interest enumerated in section 2 of the

Act. Mr. Fraser concluded that the Motion represents good planning and it is in the public interest to bring the ZBL into force in respect of the Subject Lands.

[20] Ms. Smith submitted that the approval of the ZBL in respect of the Subject Lands would not prejudice the rights of any Party to the ZBL Appeal proceedings. Ms. Smith submitted a Draft Order attached to the Motion as Attachment 3 that contains language recommended to ensure that the approval of the Motion is without prejudice to the remaining ZBL appeals and any position any party intends to take on the remaining appeals.

CITY'S RESPONSE

[21] Mr. MacDonald filed the City's Response outlining that the City does not oppose the Motion as the request is on a site specific basis in that it only applies to the Subject Lands. Further, Mr. MacDonald stated that the City's support is based on the relief being requested without prejudice to the City and all other parties on the appeal and that no changes are sought to the instruments as they were passed by Council as they affect the Subject Lands.

ANALYSIS AND FINDINGS

[22] The Tribunal in consideration of the Motion references section 34(31) of the Act which provides that the Tribunal may, before all of the appeals have been disposed of, make an order providing that any part of the by-law not in issue in the appeal shall be deemed to have come into force on the day the by-law was passed.

[23] Further, pursuant to Rule 10 of the Tribunal's *Rules of Practice and Procedure* (the "Rules"), JBR was directed to bring their Notice of Motion in writing and that the Notice of Motion, a supporting affidavit, and a copy of the Rules be served in accordance with the Rules to all persons indicated on the list provided by the Tribunal.

[24] The Tribunal reviewed the Response provided from the City outlining support for the Motion. No other Responses were received.

[25] In respect of the ZBL, the Tribunal accepts the uncontroverted evidence of Mr. Fraser in support of the approval of part of the ZBL as it applies to the Subject Lands. The Tribunal finds that the ZBL has regard for the matters of provincial interest as enumerated in section 2 of the Act. The ZBL will promote the orderly development of safe and healthy communities and will provide employment opportunities.

[26] In consideration of the Provincial Policy Statement, the Tribunal notes that a new Provincial Policy Statement was approved and took effect on May 1, 2020 (“2020 PPS”). The Tribunal further notes that all decisions made under the Act after that date are required to be consistent with the 2020 PPS. The Tribunal reviewed the part of the ZBL as it applies to the Subject Lands and finds it is consistent with the 2020 PPS. The Tribunal is satisfied that the part of the ZBL, as it applies to the Subject Lands promotes an efficient use of land and infrastructure, accommodates employment, and will result in appropriate development standards to facilitate a compact form.

[27] The Tribunal finds that the approval of the ZBL as it applies to the Subject Lands conforms to the 2019 Growth Plan. The ZBL will support complete communities by providing a mix of land uses and by ensuring the development of compact built form for new development and will contribute to transit supportive densities.

[28] The Tribunal is satisfied that the ZBL as it applies to the Subject Lands will conform to and implement the UHOP policies as they apply to the Subject Lands. The ZBL will provide a range of retail shops and services that cater primarily to the weekly and daily shopping needs of the residents in the immediate neighbourhood.

[29] In respect of the Motion, the Tribunal finds that the site specific nature of the request and the terms, which include the stipulations that the approval is without prejudice to the rights of any other Party with respect to the remaining appeals, as set out in the Draft Motion included at Tab 3 of the Motion is appropriate.

[30] Further, the Tribunal finds that granting Party status to JBR for the limited purpose of the consideration of the Motion is appropriate. JBR has a direct interest in

the Appeal as the Subject Lands are affected by the ZBL. The Tribunal notes that the City supports the proposed development as confirmed in their Response and with the conditional approval of the site plan application.

DECISION

[31] For the reasons set out above, the Tribunal grants the Motion and Orders that the appeal be allowed in part and grants the amendment to the City of Hamilton Zoning By-law No. 05-200 in accordance with City of Hamilton Zoning By-law No. 17-240 as it applies to the lands municipally known as 2506 and 2520 Regional Road 56. The Zoning By-law Amendment is in force and effect and deemed to have come into force on the day it was passed, namely November 8, 2017.

[32] The Tribunal Orders that the coming into force and effect of the City of Hamilton Zoning By-law No. 17-240 on the lands municipally known as 2506 and 2520 Regional Road 56 as set out in this Order:

- (a) shall be strictly without prejudice to the rights of any Party with respect to their proposed amendments or exceptions to the Zoning By-law in relation to the remaining appeals. For greater certainty and without limiting the foregoing:
 - (i) this Order is without prejudice to any position that may be taken by any Party at a contested hearing; and
 - (ii) this Order shall not have any effect on the Tribunal's authority to grant site-specific amendments or exceptions to the Zoning By-law regardless of whether the proposed amendments or exceptions deviate from, or result in the repeal or replacement of, portions of the Zoning By-law that the Tribunal has already confirmed are in force and effect;

- (b) shall not have the effect of limiting future resolutions of any remaining appeal;
- (c) shall not limit the rights of any Party to seek to amend those portions of the Zoning By-law that remain under appeal;
- (d) does not limit the jurisdiction of the Tribunal to consider and approve amendments to the Zoning By-law, including but not limited to the addition of permitted uses and building types, and site-specific amendments or exceptions to the Zoning By-law that may deviate from portions of the Zoning By-law that the Tribunal has already confirmed are in force and effect; and
- (e) shall not apply to any portion of the Zoning By-law that remains in issue site-specifically in any remaining appeal.

[33] This is the Order of the Tribunal.

"David Brown"

DAVID BROWN
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal
A constituent tribunal of Ontario Land Tribunals
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