

Ontario Land Tribunal

655 Bay Street, Suite 1500
Toronto, ON M5G 1E5
Telephone: (416) 212-6349
Toll Free: 1-866-448-2248
Website: olt.gov.on.ca

Tribunal ontarien de l'aménagement du territoire

655 rue Bay, suite 1500
Toronto, ON M5G 1E5
Téléphone: (416) 212-6349
Sans Frais: 1-866-448-2248
Site Web: olt.gov.on.ca



May 21, 2025

TO: All recipients of the Ontario Land Tribunal Decision and Order issued on May 7, 2025

RE: OLT CASE NO.: OLT-24-000663, DECISION ISSUED ON MAY 7, 2025

On May 7, 2025 the Ontario Land Tribunal issued its Decision and Order ("Decision") on the above noted case.

Rule 24.4 of the Ontario Land Tribunal's *Rules of Practice and Procedure* ("Rule") states that the Tribunal may at any time correct a technical or typographical error made in a decision or order.

The Tribunal has corrected the Decision under the authority of this Rule by: inserting omitted text in the last sentence of 2 b) i) ii) in Attachment 1 .

A corrected version of the Decision issued on May 7, 2025 is enclosed with this communication. This enclosed Decision replaces the Decision and Order issued on May 7, 2025.

Thank you,

"Euken Lui"

EUKEN LUI
REGISTRAR

Encl.

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: May 07, 2025

CASE NO(S):

OLT-24-000663

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:

Zest (Town Square) Developments Inc. and Zest Communities Inc.

Subject:

Application to amend the Zoning By-law – Refusal or failure to make a decision

Description:

To permit a 2-storey commercial/office, multiple 4-6 storey residential buildings, and 1.5-3-storey townhouse units

Reference Number:

ZAC-20-029

Property Address:

393 Rymal Road West

Municipality/UT:

City of Hamilton

OLT Case No.:

OLT-24-000663

OLT Lead Case No.:

OLT-24-000663

OLT Case Name:

Zest (Town Square) Developments Inc. and Zest Communities Inc. v. Hamilton (City)

Heard:

April 28, 2025 by video hearing

APPEARANCES:

Parties

Zest (Town Square) Developments Inc. and Zest Communities Inc.

City of Hamilton

Counsel

Isaiah Banach
Jessica Chen

Melanie Benedict
Patrick McDonald (*in absentia*)

DECISION DELIVERED BY KURTIS SMITH ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] Zest (Town Square) Developments Inc. and Zest Communities Inc. (“Zest”) seeks the approval of a Zoning By-law Amendment (“ZBA”) to solidify their proposed development on the lands municipally known as 393 Rymal Road West in the City of Hamilton (“City”) within the St. Elizabeth Village.

[2] Following several revisions to the original ZBA by Zest and executed Minutes of Settlement (Exhibit 1) between Zest and the City, the original five-day merit hearing was converted to an uncontested hearing of the merits of the Modified ZBA.

[3] To support the Modified ZBA the Tribunal, based on Sarah Knoll’s *Curriculum Vitae* and Acknowledgement of Experts Duty, qualified Ms. Knoll to provide opinion evidence in the area of land use planning.

EVIDENCE

[4] Ms. Knoll provided the Tribunal with oral, written (Exhibit 3 a, b, and c), and visual (Exhibit 4) evidence to support her findings that the Modified ZBA has regard for s. 2 of the *Planning Act* (“Act”), is consistent with the Provincial Planning Statement 2024 (“PPS”), conforms to the Urban Hamilton Official Plan (“UHOP”), and that the revised proposed development contemplated through the Modified ZBA will not have unacceptable adverse impacts on the surrounding neighbourhood.

[5] The Revised Proposed Development includes 430 residential units contained within a mix of 4-6 storey apartments, 1-1 ½ storey bungalow townhouses, and 3 storey townhouses, 2,024 square meters of retail and office space, above and below ground parking, and amenity space in the form of a central urban square and landscape areas.

[6] The notable focal point to the public realm of the proposed development is the commercial building presence along Rymal Road West at the corner of Bishop Ryan Way as shown in the rendering on Exhibit 1, page 19.

[7] Ms. Knoll opined that the Modified ZBA is appropriate, conforms and is consistent with the PPS and UHOP, and should be approved, as:

- a. The proposed scale of development will not create any unacceptable adverse impacts;
- b. The proposed use, scale and siting of development are respectful of the adjacent land uses and existing site constraints relating to grading;
- c. The Revised Proposed Development will enhance the existing neighbourhood as it will provide aspects of a complete community, providing alternative housing options and amenities, including commercial development and provisions for alternative modes of transportation;
- d. The Revised Proposed Development is an appropriate height and density for the Site, considering its context in the surrounding neighbourhood;
- e. The Revised Proposed Development provides for appropriate landscaping requirements with ample open space areas, and existing tree retention and planting;
- f. The buildings have been sited to be compatible with the surrounding area and the pedestrian environment is reinforced through appropriate building massing techniques, including a centralized square and walkways;
- g. The amendments proposed are a direct result of the incorporation of the Site to the existing St. Elizabeth Village community, the neighbouring existing residential, and the existing grading interface with Rymal Road West. The Modified ZBA as it contributes to an appropriate relationship with those elements and will not negatively affect the existing and planned function of the area.

FINDINGS

[8] On the uncontested evidence of Ms. Knoll, the Tribunal finds that the Modified ZBA has due regard for matters of Provincial Interest in s. 2 of the Act, is consistent with the PPS, conforms to the UHOP; therefore, represents good planning in the public interest.

ORDER

[9] **THE TRIBUNAL ORDERS** that the appeal is allowed in part, and Orders that:

- a. The City of Hamilton Zoning By-law No. 05-200 is hereby amended as set out in **Attachment 1** to this Order. The Tribunal authorizes the municipal clerk of the City of Hamilton to assign a number to this by-law for record keeping purposes; and,
- b. The Tribunal may be spoken to if there are any matters that arise in connection with the implementation of this Order.

Kurtis Smith

KURTIS SMITH
MEMBER

Ontario Land Tribunal

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

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

Authority:Item ,
Report (PED24) CM:
Ward:**ATTACHMENT 1****Bill No.****CITY OF HAMILTON
BY-LAW NO. 25-120-OLT****To Amend Zoning By-law No. 05-200 Respecting Lands Located at 393
Rymal Road West**

WHEREAS the Ontario Land Tribunal, in its Decision/Order No. OLT- dated May 7, 2025 approved the amendment to Zoning By- law 05-200, as herein provided;

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan;

NOW THEREFORE the Council amends Zoning By-law No. 05-200 as follows:

1. That Schedule "A" – Zoning Maps, Map No. 1393 appended to and forming part of By- law No. 05-200, is amended by changing the zoning from the Transit Oriented Corridor Mixed Use Medium Density (TOC1) Zone to the Modified Transit Oriented Corridor Mixed Use Medium Density Zone, Modified (TOC1,) for the lands known as 393 Rymal Road West, Hamilton, the extent and boundaries of which are shown on Schedule "A" to this By-law.
2. That Schedule "C" - Special Exceptions, is amended by adding the following new Special Exemption:
 - "939" Within the lands zoned Transit Oriented Corridor Mixed Use Medium Density (TOC1,939) Zone, identified on Map 1393 of Schedule "A" - Zoning Maps and described as 393 Rymal Road West, the following special provisions shall apply:
 - a) Notwithstanding Section 3 as it relates to the definition of Multiple Dwelling, the following shall apply:

- i) Multiple Dwelling – Shall mean a building or part thereof containing three or more dwelling units

- b) Notwithstanding Section 5.1.1 d), Section 5.2.4, Section 5.3.1 c) and d) and Section 5.7.1 a) iv) the following regulations shall apply:
 - i) Access Requirements
 - i) May be permitted abutting a street line.
 - ii) Tandem parking spaces within a garage and driveway may be permitted and shall not require the minimum access aisle width, and;
 - iii) Access to parking may be located on adjacent lot/zone
 - ii) Design Standards

A minimum 1.5 metre wide landscape strip which shall contain a visual barrier in accordance with Section 4.19 of this By-law shall only apply along the eastern lot line.
 - iii) Minimum Required Parking Rate

Commercial Uses
A minimum combined total of 81 parking spaces shall be provided, along with any reduction that may be required from 5.3.1 e) v)

- c) Notwithstanding Sections 11.1.1.1, 11.1.3 a) ii), b), c), d) i) and iii), f), g) ii), g) v), g) vi), g) vii), and i) i), the following regulations shall apply:

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|----|---|------|---|
| a) | Building Setback from a Street Line | ii) | Maximum 4.5 metres where a Building has frontage on Rymal Road West, except there shall be no maximum for all other Buildings that are greater than 4.5 metres from Rymal Road West. |
| b) | Minimum Rear Yard | | 4.0 metres. |
| c) | Minimum Interior Side Yard | i) | 7.5 metres, except; |
| | | ii) | 4.0 metres along the westerly lot lines and; |
| | | iii) | 0.0 metres abutting a daylight triangle. |
| d) | Building Height | i) | A minimum of 9.0 metres for the building closest to Rymal Road West, and a minimum of 7.5 metres for all other buildings. |
| f) | Maximum Gross Floor Area for an Office Building | | The gross floor area for an individual Office unit shall not exceed 500.0 square metres. |
| | | | The total combined gross floor area of all Office uses shall not exceed 10,000.0 square metres. |
| g) | Built Form for New Development | ii) | For an interior lot or a through lot the minimum width of the ground floor façade facing the front lot line shall be greater than or equal to 40% of the measurement of the front lot line. |
| | | v) | A maximum driveway width of 14.0 metres shall be provided and may be provided within another zone/lot. |

vi) Parking, stacking lanes, or aisles may be located between stand-alone residential buildings and front lot line.

i) Visual Barrier

i) A visual barrier shall be required along the easterly lot line in accordance with the

requirements of Section 4.19 of this By-law.

3. That Schedule “D” – Holding Provisions be amended by adding the additional Holding Provision as follows:

“H200” Notwithstanding Section 11.1 of the By-law, within lands zoned Transit Oriented Corridor Mixed Use Medium Density (TOC1,939) Zone, identified on Map No. 1393 of Schedule “A” – Zoning Maps, no development shall be permitted until such time as:

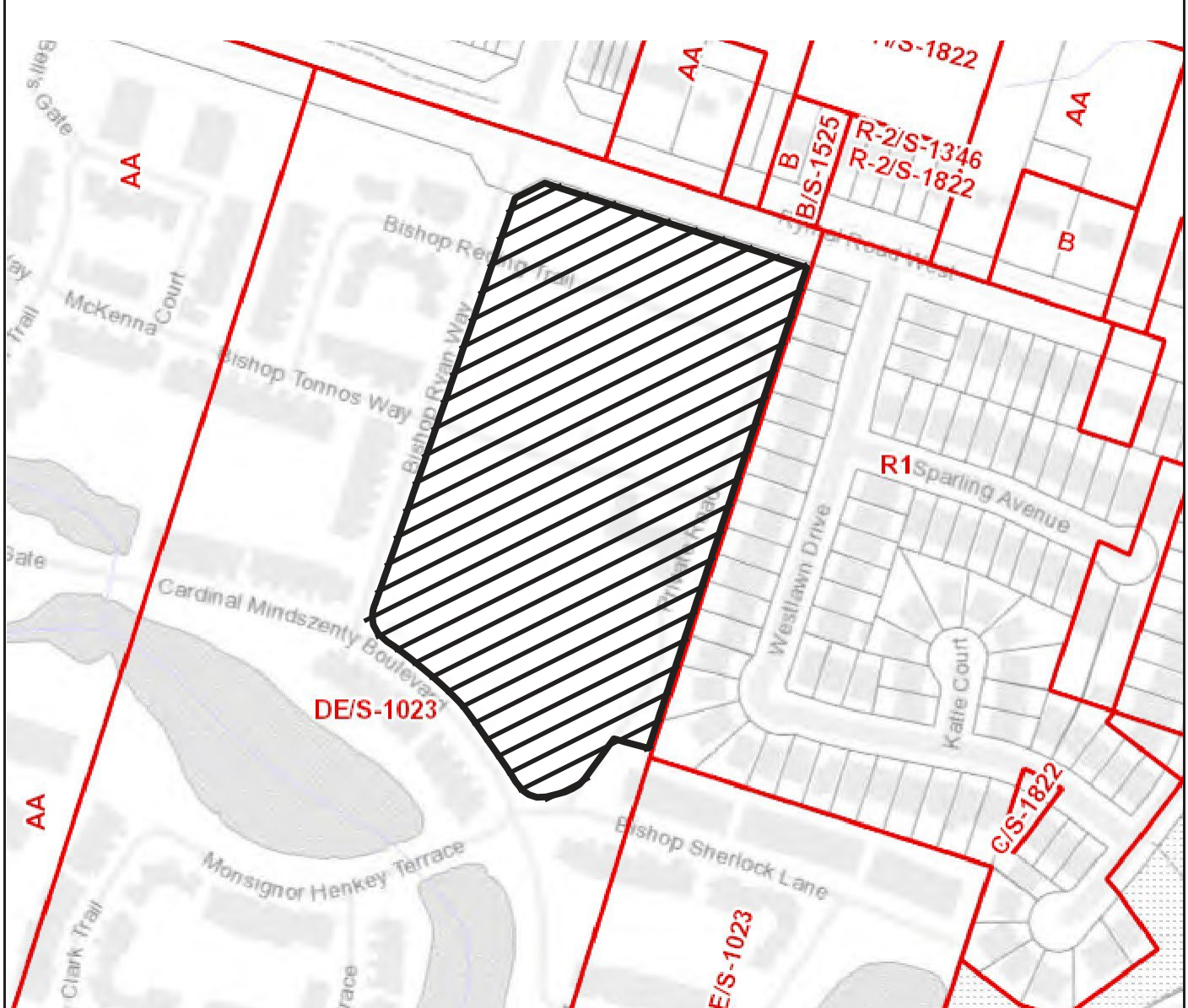
- a) The Owner submits and receives approval for a revised Functional Servicing Report (FSR) detailing the stormwater management design and sanitary sewer design, including downstream sewer analysis. The sanitary sewer analysis and monitoring requirements shall be in accordance with a scope of work agreed upon by both parties, demonstrating that the existing municipal infrastructure has adequate capacity, as per City standards and by-laws, to support the proposed development, all to the satisfaction of the Director of Development Engineering.
- b) That the Owner makes satisfactory arrangements with the City’s Growth Management Division and enter into and register on title of the lands, an external works agreement with the City for the design and construction of any required improvements to the municipal infrastructure at the owner’s cost, should it be determined that upgrades are required to the infrastructure to support this development, according to the FSR and WHAR accepted by the City’s Director of Development Engineering.


- c) Submit to the City's Director of Development Engineering the necessary approvals from the Ministry of Environment, Conservation and Parks (MECP) for the proposed stormwater management works, including discharging the flow to the existing inline pond on the subject land, in accordance with the Ontario Water Resources Act, R.S.O. 1990, c. O.40, and Ontario Regulation 525/98. Alternatively, provide a confirmation letter from MECP stating that they do not have objection to the proposed storm sewer from this site connecting to the existing outlet on the adjacent lands under the same ownership, subject to any City requirements to allow such use between owners, such as a Joint Use Agreement or similar instrument, and necessary easements/consent severance, to meet the City's current sewer drain by-law requirements.
4. That this By-law No. 25- shall come into force and be deemed to come into force in accordance with Sub-Section 34(21) of the Planning Act, either upon the date of passage of this By-law or as otherwise provided by the said Sub-Section.

PASSED this 7th day of May, 2025., _____

Mayor

City Clerk



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| This is Schedule "A" to By-Law No. 25-120-OLT Passed the <u>7th</u> day of <u>May</u> 2025 | | _____ Mayor Clerk |
| Schedule "A" Map Forming Part of By-law No. <u>25-120-OLT</u> to Appeal By-law No. 6593 and to Amend the By-law No 05-200 | | Subject Property 393 Rymal Road West  Lands to be rezoned from DE/S-1023, DE/S-1788 to TOC1-XX |
| Scale: N.T.S. Date: May 10, 2023 | File Name/Number _____ Prepared by: GSP Group | |