

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

**18-105-LPAT-01**



**ISSUE DATE:** February 06, 2019

**CASE NO(S).:** PL180522

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

Appellant:	Michael Robitaille
Subject:	By-law No. 18-105
Municipality:	City of Hamilton
OMB Case No.:	PL180522
OMB File No.:	PL180522
OMB Case Name:	Robitaille v. Hamilton (City)

**Heard:** December 19, 2018, in Dundas, Ontario

**APPEARANCES:**

<u>Parties</u>	<u>Counsel*/Representative</u>
Mike Robitaille	Self-represented
City of Hamilton	J. Wice*

**DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE  
TRIBUNAL**

---

[1] On April 25, 2018, the City of Hamilton ("City") Council passed Zoning By-law No. 18-105 ("Zoning By-law Amendment") amending setback and other aspects of the residential zoning in Town of Ancaster Zoning By-law No. 87-57. On May 23, 2018,

Mike Robitaille ("Appellant") appealed the passing of the Zoning By-law Amendment. The basis of his appeal is that the Zoning By-law Amendment fails to conform with the Urban Hamilton Official Plan front yard setback and side/flankage yard allowances and will result in development that is incongruent with the established built form of existing neighbourhoods.

[2] A Case Management Conference ("CMC") in this proceeding was scheduled for November 7, 2018. Due to a failure to serve and file a Notice of Case Management Conference in accordance with Rule 26.18 of the Tribunal's *Rules of Practice and Procedure* ("Rules"), the CMC was adjourned to December 19, 2018 to ensure service of the notice.

#### **REQUESTS FOR PARTY STATUS**

[3] In accordance with the requirements under the *Local Planning Appeal Tribunal Act, 2017* ("LPAT Act"), the Tribunal received written submissions and requests to participate in this proceeding from James and Kimberley Thomson and Tom and Teresa St. Michael (together "Participants"). At the CMC, the City objected to these requests arguing that they repeat the concerns raised by the Appellant and participation of these individuals would not assist the Tribunal in making its decision. The written submission requirement in s. 40(1) of the *LPAT Act* requires that persons seeking status must set out whether the decision on the instrument under appeal is inconsistent with the PPS or does not conform to or conflicts with a provincial plan of official plan. In the present case, the Participants submitted that it does not conform with the Urban Hamilton Official Plan. Rule 26.19 of the Tribunal's Rules states that written submissions shall explain the nature of the person's interest in the matter and how his or her participation will assist the Tribunal in determining the issues in the proceeding. The Tribunal received submissions from the Parties and the Participants regarding the status requests and found that the Participants brought distinct perspectives and concerns regarding conformity of the proposed Zoning By-law Amendment with the City's Official Plan. Given these distinct perspectives and concerns and the Participants' submissions regarding conformity of the proposed Zoning By-law Amendment with the

Official Plan, the Tribunal found that their participation will assist the Tribunal in determining the issues in this proceeding. It granted participant status to Mr. and Ms. Thomson and to Mr. and Ms. St. Michael.

#### **FACTS, ISSUES, ADMISSIONS, DISCLOSURE**

[4] The Tribunal made inquiries with the Parties with a view to identifying the facts or evidence that might be agreed upon and identifying the issues arising in the appeals. The Parties submitted that there are few facts in dispute and the issues have been concisely crafted. After some discussion, the Parties submitted that the issues cannot be further narrowed or scoped. The Parties agreed that the issues as stated in the Appellant's Appeal Record shall be the issues addressed at the hearing of the appeal. They stated that all relevant documents have been disclosed and that no further exchange of documents is necessary.

#### **FORMAT AND SCHEDULING OF HEARING**

[5] The Tribunal heard submissions from the Parties regarding whether a hearing is necessary in this proceeding and the format of the hearing, if one is held. Based on the Parties' submissions, the Tribunal determined that there shall be an oral hearing. The hearing will consist solely of the presentation of oral submissions by the Parties. No witnesses will be called to be examined by the Tribunal at the hearing and, in accordance with the provisions of the *LPAT Act*, no evidence will be adduced at the hearing. Each party will be allocated 75 minutes to make submissions at the hearing. The Tribunal directed that the hearing will be held on Tuesday, April 30, 2019 commencing at 10 a.m. in Hamilton.

#### **MEDIATION AND SETTLEMENT**

[6] As required by s. 39(2) of the *LPAT Act*, the Tribunal and the Parties addressed opportunities for settlement and the possibility of mediation as a means to resolve the appeal. The Appellant expressed an interest in engaging in settlement discussions.

The City advised the Tribunal that it will seek instructions in this regard. It submitted that given the timeframes involved and the issues in dispute, the appeal is not amenable to Tribunal-assisted mediation.

## MOTION

[7] Prior to the CMC, the Tribunal received notice of a motion from the City seeking an Order that the Zoning By-law Amendment be deemed under s. 34(31) of the *Planning Act* to have come into force on the day that it was passed on April 25, 2018, except for the portions of the Zoning By-law Amendment under appeal. The City submitted that the appeal focuses on specific standards in the Zoning By-law Amendment and that the majority of the Zoning By-law Amendment is uncontested. It submitted that it is good planning to have the uncontested portions come into full force and effect and that such an Order would protect the Appellant's appeal rights. The City further submitted that the uncontested portions of the Zoning By-law Amendment are stand-alone provisions and would not be affected even if the Appellant is fully successful in his appeal. The City stated the uncontested provisions include all the provisions in the Zoning By-law Amendment apart from:

- Table 10.3.4 – Front Yard Setback;
- Table 10.3.5 – Side Yard Setback;
- Table 10.3.7 – Maximum Height; and
- Section 10.3.1.

[8] The Appellant opposed the City's motion. He argued that the uncontested portions of the Zoning By-law are not stand-alone provisions and that if he is successful in his appeal some of the uncontested portions may need to be amended. He stated that any changes to front yard setback requirements as a result of the appeal may, for example, require amendments to the uncontested minimum lot area requirements in the

Zoning By-law Amendment. He did not however elaborate on why this would be the case.

[9] Although the Appellant argued that uncontested portions of the Zoning By-law Amendment may need to be amended if he is successful in his appeal, he neither provided substantiated nor convincing submissions on how that could come about or how he would be otherwise prejudiced by the Tribunal allowing the City's requested relief. Based on the submissions of the Parties, the Tribunal finds that the uncontested portions of the Zoning By-law are not in issue in this appeal and deems the Zoning By-law Amendment to have come into force on the day that it was passed on April 25, 2018, except for those provisions under appeal, namely: Table 10.3.4 – Front Yard Setback; Table 10.3.5 – Side Yard Setback; Table 10.3.7 – Maximum Height; and Section 10.3.1.

#### ORDER

[10] The Tribunal orders that:

- a. James and Kimberley Thomson and Tom and Teresa St. Michael are Participants in this proceeding;
- b. In accordance with s. 34(31) of the *Planning Act*, the Zoning By-law Amendment is deemed to have come into force on the day that it was passed on April 25, 2018, except for those portions under appeal, namely: Table 10.3.4 – Front Yard Setback; Table 10.3.5 – Side Yard Setback; Table 10.3.7 – Maximum Height; and Section 10.3.1.
- c. an oral hearing will be held on **Tuesday, April 30, 2019 commencing at 10 a.m.** at:

City of Hamilton (Hamilton)  
Room 101  
50 Main Street East  
Hamilton, Ontario

d. the hearing will consist solely of the presentation of oral submissions by the Parties. Each party will be allocated 75 minutes to make submissions at the hearing.

[11] This member of the Tribunal is seized.

[12] No further notice of the hearing will be given.

*"Hugh S. Wilkins"*

HUGH S. WILKINS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248