

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 04, 2023

CASE NO(S).: OLT-21-001799
(Formerly PL171450)

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

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| 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 |
| Description: | Official Plan Amendment to amend policies within the Commercial and Mixed Use Designations and update mapping within the Urban Hamilton Official Plan |
| Municipality: | City of Hamilton |
| Municipal Reference No.: | OP-69 |
| OLT Case No.: | OLT-21-001799 |
| Legacy Case No.: | PL171450 |
| OLT Lead Case No.: | OLT-21-001799 |
| Legacy Lead Case No.: | PL171450 |
| OLT 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

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| Appellant: | 1804487 Ontario Inc. |
| Appellant: | 1826210 Ontario Inc. |
| Appellant: | 2294643 Ontario Inc. |
| Appellant: | 2531083 Ontario Inc.; and others |
| Subject: | By-law No. 17-240 |
| Description: | Zoning By-law Amendment is to introduce Commercial and Mixed Use Zones and a Utility Zone, to establish mapping and text within the City of Hamilton Zoning By-law No. 05-200 |

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| Municipality: | City of Hamilton |
| Municipal Reference No.: | 17-240 |
| OLT Case No.: | OLT-21-001806 |
| Legacy Case No.: | PL171451 |
| OLT Lead Case No.: | OLT-21-001799 |
| Legacy Lead Case No.: | PL171450 |

Heard: October 10, 2023 by Video Hearing

APPEARANCES:

Parties

1826210 Ontario Inc.

City of Hamilton

Counsel

Jennifer Meader

Peter Krysiak

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. INNIS AND C. I. MOLINARI
ON OCTOBER 10, 2023 AND INTERIM ORDER OF THE TRIBUNAL**

[Link to Order](#)

INTRODUCTION

[1] The Tribunal had originally scheduled a six-day Merit Hearing of the appeals by 1826210 Ontario Inc. (“Appellant”), owner of the lands known municipally as 3011 Homestead Drive (“Subject Property”), concerning the City of Hamilton’s (“City”) adoption of Official Plan Amendment (“OPA”) No. 69 (“OPA 69”) and associated Zoning By-law Amendment No. 17-240 (“ZBA 17-240”), which amends the City’s comprehensive Zoning By-law No. 05-200 (“ZBL 05-200”). OPA 69 and ZBA 17-240 are in force and effect pursuant to previous Decisions of the Tribunal, except as they relate to remaining site-specific appeals, including the appeals related to the Subject Property.

[2] The City has an ongoing process to implement ZBL 05-200 in stages, which will eventually eliminate the individual Zoning By-laws of the former municipalities that now

constitute the City. The purpose of ZBA 17-240 is to create new Mixed-Use, Commercial and Utility zones, and to bring the land regulated by ZBA 17-240 into the ZBL-05-200 zoning area to create consistent zoning within the urban area.

[3] The purpose of OPA 69 is to add new policies and amend existing policies, maps and schedules so that the proposed Commercial and Mixed-Use zones under ZBA 17-240 conform to and implement the Urban Hamilton Official Plan ("UHOP").

[4] Prior to the commencement of the Hearing, the Tribunal received correspondence from the City advising that the Parties had reached a settlement on the issues on the basis of the implementation of a site-specific zoning by-law amendment ("Proposed ZBA") and requested that the Merit Hearing be converted to a Settlement Hearing.

[5] In accordance with Rule 12 of the Tribunal's *Rules of Practice and Procedure*, the Tribunal convened the proceedings as a Hearing on the terms of the settlement.

[6] As explained below in paragraphs [18] and [19], the Appellant advised the Tribunal that, at this hearing event, only the appeal related to ZBA 17-240 filed under s. 34(19) of the *Planning Act* ("Act") was being pursued, and not the appeal related to OPA 69 filed under s. 17(24) of the Act, however, the Appellant wished to maintain its appeal against OPA 69 at this time.

[7] As such, the Tribunal only turned its mind to the merits of the appeal against ZBA 17-240 and the Proposed ZBA, and not to the merits of the appeal against OPA 69.

[8] When considering an appeal filed pursuant to s. 34(19) of the Act, the Tribunal must have regard to the matters of provincial interest as set out in s. 2 of the Act. Section 3(5) of the Act requires decisions of the Tribunal affecting planning matters to be consistent with the Provincial Policy Statement, 2020 ("PPS") and, in this case, conform to the A Place to Grow: Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and to the UHOP.

[9] In consideration of the statutory requirements set out above, the Tribunal must be satisfied that the Proposed ZBA represents good planning and is in the public interest.

SITE AND SURROUNDING AREA

[10] The Subject Property is currently zoned DD – Deferred Development (“DD Zone”) under Zoning By-law No. 464 (“ZBL-464”), being the comprehensive Zoning By-law for the former Township of Glanbrook.

[11] The Subject Property is located on the east side of Homestead Drive, and west of Upper James Street North. It is an irregularly shaped through-lot of approximately 0.71 hectares, located north of Airport Road West within an area known as Mount Hope, with frontage of 26.4 metres (“m”) on Homestead Drive and frontage of 81 m on Upper James Street North. The property is vacant with some mature trees and vegetation around the perimeter.

[12] Surrounding land uses include a greenhouse and residence to the south, residential uses to the west and north, a motel to the north and Upper James Street North, a major arterial road, to the east. The property is in proximity to the Hamilton International Airport and Mount Hope Park.

SUBMISSIONS

[13] Prior to the commencement of the Hearing, the Tribunal received the Affidavit of Mike Crough, Principal Planner with the firm Arcadis Professional Services (Canada) Inc., and marked it as Exhibit 1.

[14] On consent of the Parties, the Appellant presented Mr. Crough, who was affirmed and deemed qualified to give expert opinion evidence in land use planning.

[15] Mr. Cough provided the Tribunal with details regarding the Proposed ZBA and provided planning evidence in support of the approval of the Proposed ZBA.

PLANNING EVIDENCE

[16] Mr. Crough testified that the Parties had agreed to settle the appeal by implementing the Proposed ZBA for the Subject Property and that the Parties acknowledge that a corresponding amendment to the UHOP ("OPA Amendment") is required to implement the Proposed ZBA.

[17] Mr. Crough advised that the Parties jointly agreed and acknowledged that the OPA Amendment would be approved as part of the next scheduled housekeeping update of the UHOP by the City ("Housekeeping OPA"), and not through the appeal process.

[18] Further, Mr. Crough advised that the Appellant wished to maintain its appeal against OPA 69 until the Housekeeping OPA is approved by the City, and in this respect, the OPA Amendment was submitted only to provide context and to inform the Tribunal. Mr. Crough advised that the OPA Amendment provides certainty regarding permitted uses and introduces a special policy area permitting uses that correspond with the Proposed ZBA to ensure that it conforms to, and implements, the UHOP.

[19] Mr. Crough testified that the purpose of the Proposed ZBA is to remove the Subject Property from ZBL-464 and bring the lands into ZBL 05-200, to rezone the lands from DD Zone to C6 – District Commercial Zone ("C6 Zone"), and to include the standard list of uses permitted under the C6 Zone, as well as the following:

- Contractor's Establishment
- Commercial School
- Computer, Electronic and Data Processing Establishment
- Planned Business Centre

- Production Studio
- Research and Development Establishment
- Surveying, Engineering, Planning or Design Business
- Trade School
- Tradesperson's Shop
- Warehouse

[20] Mr. Crough testified that the Proposed ZBA would include:

- A maximum setback of 8 m from the rear lot line (along Upper James Street North) and 6 m from the front lot line (along Homestead Drive), and that the maximum setback shall only apply to the nearest point of a building closest to the nearest adjacent street line, and in the case of a through-lot, shall not be required from any part of a building to the opposite street line;
- A minimum rear yard setback of 1.5 m, as measured from Upper James Street North;
- A minimum interior side yard setback of 2 m for a lot line abutting a residential or institutional zone, or a lot containing a residential use;
- The elimination of the requirement for internal parking landscape islands; and
- A standard parking ratio for a building containing multiple permitted uses at a rate of one space per 50 square metres ("m²") gross floor area ("GFA"), excepting any Warehouse use which shall require parking at a rate of one space per 30 m² of GFA, which accommodates the Office portion of such use. For any building containing a single permitted use,

the normal parking rates for individual uses in Section 5.6 c) of ZBL 05-200 shall apply.

Planning Act

[21] It was the opinion of Mr. Crough that the Proposed ZBA has regard to the relevant matters of provincial interest as set in s. 2 of the Act and more specifically subsections:

- (f) the adequate provision and efficient use of communications, transportation, sewage and water services and waste management systems;
- (h) the orderly development of safe and healthy communities;
- (k) the adequate provisions of employment opportunities;
- (n) the resolution of planning conflicts involving public and private interests;
- (o) the protection of public health and safety; and
- (p) the appropriate location of growth and development.

[22] Mr. Crough opined that the Proposed ZBA has regard for provincial interest because the Subject Property is located within the established UHOP urban boundary, is identified as greenfield lands, and is serviced by municipal water, sewage and waste collection. Further, he opined that the Subject Property is a suitable size and location for development, with no significant hazards or features, that the proposed mixed uses will support commercial and employment activities, and that compatibility with sensitive uses can be achieved through setbacks, landscape buffers and fencing. Further, he agreed that the settlement of the appeal resolves the planning conflicts between the City and the Appellant for the development of the Subject Property.

Provincial Policy Statement, 2020

[23] It was Mr. Crough's opinion that the Proposed ZBA is consistent with the PPS as the Subject Property is within the settlement boundary, is within a greenfield area and can be serviced by the City. Mr. Crough opined that the Proposed ZBA is further consistent with the PPS because it will slightly broaden the standard use permissions in the C6 Zone to allow for flexibility in uses suited to the location of the lands along a major arterial road, near the airport, thereby supporting economic development. He proffered that the use permissions and performance standards will permit appropriate and orderly development, will have consideration for adjacent lands and uses, and will allow for functional development of the Subject Property to proceed through other planning application stages (i.e. site plan approval).

A Place to Grow: Growth Plan for the Greater Golden Horseshoe

[24] It was Mr. Crough's opinion that the Proposed ZBA conforms with the Growth Plan as it will support the achievement of complete communities and support economic development. Further, Mr. Crough opined that the Proposed ZBA conforms with the Growth Plan as it will not compromise the City's ability to accommodate intensification and will allow for a mix of commercial uses on the Subject Property that are within a designated greenfield area.

Urban Hamilton Official Plan and Mount Hope Secondary Plan

[25] Mr. Crough testified that the Proposed ZBA is consistent with and conforms to the goals, objectives, and policies of the UHOP, including the policies for urban structure, urban corridors, neighbourhood structural elements, Commercial and Mixed Use designations, and the policies specific to the District Commercial Designation.

[26] It was Mr. Crough's opinion that the Proposed ZBA will enhance the planned commercial functions of the Subject Property and allow for broader permissions, while

maintaining the standard permitted uses, in combination with performance standards that restrict the size of any one use and control the height and location of the built form.

[27] The Mount Hope Secondary Plan ("MHSP") applies to the Subject Property and designates the property District Commercial. The MHSP will be further amended through the Proposed OPA. Mr. Crough opined that the Proposed ZBA conforms to and implements the policies of the MHSP, as to be amended, ensuring compatibility with existing residential uses on adjacent lands, and supporting the planned commercial function of the area, while supporting the airport and the planned employment lands.

Zoning By-law No. 05-200

[28] Mr. Crough testified that, except for the proposed site-specific modifications, the Proposed ZBA for the Subject Property will implement a range of other provisions within ZBL 05-200, including the General Provisions and that the proposed modifications will work with the standard requirements to provide a predictable framework for future development.

[29] Mr. Crough opined that the Proposed ZBA will allow for broader use permissions while maintaining the standard permitted uses, in combination with performance standards that restrict the size of any one use and control the height and location of the built form.

[30] Mr. Crough opined that the zoning provisions, including the limitations in the C6 Zone regulating maximum size, will balance the size and scale of permitted uses, in consideration of the other objectives and policies to ensure development is compatible with existing residential uses while maintaining an appropriate level of non-residential GFA.

ANALYSIS AND FINDINGS

[31] Based on the uncontroverted expert evidence in support of the settlement provided by Mr. Crough, the Tribunal finds that the Proposed ZBA has regard to the relevant matters of provincial interest set out in s. 2 of the Act.

[32] The Tribunal finds that the evidence provided demonstrates that the Proposed ZBA is consistent with the PPS, and conforms with the Growth Plan, the UHOP and the MHSP.

[33] The settlement proposal represents an efficient use of the Subject Property, represents good land use planning and is in the public interest.

[34] The Parties jointly requested the Tribunal to withhold its Final Order on the Proposed ZBA until the Housekeeping OPA, which will implement the OPA Amendment, is approved by the City and is in full force and effect. In this regard, the Appellant agreed to withdraw its appeal against OPA 69 within 15 days of the coming into force and effect of the Housekeeping OPA, if it implements the OPA Amendment.

[35] In this respect, and at the request of the Parties, the Tribunal is not ruling on the OPA appeal at this time.

INTERIM ORDER

[36] **THE TRIBUNAL ORDERS THAT** the Zoning By-law Amendment appeal is allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of the pre-requisite matter identified in paragraph [37] below, and the Zoning By-law Amendment set out in Attachment 1 to this Interim Order, is hereby approved in principle.

[37] The Tribunal will withhold the issuance of its Final Order contingent upon confirmation of the City Solicitor of the following pre-requisite matter:

- a) The Tribunal is advised that the Urban Hamilton Official Plan has been amended to bring the Zoning By-law Amendment into conformity therewith.

[38] The Panel Members will remain seized for the purposes of reviewing and approving the final draft of the Zoning By-Law Amendment and the issuance of the Final Order.

[39] The Tribunal may be spoken to should a matter arise in connection with the implementation of this Interim Order.

[40] If the Parties do not submit the final draft of the Zoning By-law Amendment, and provide confirmation that the contingent pre-requisite to the issuance of the Final Order set out in paragraph [37] above has been satisfied, and do not request the issuance of the Final Order, by **Wednesday, April 10, 2024**, the Appellant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendment and request for issuance of the Final Order by the Tribunal.

[41] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine additional timelines and the deadline for the submission of the final form of the instrument, the satisfaction of the contingent prerequisite and the issuance of the Final Order.

"J. Innis"

J. INNIS
MEMBER

"C. I. Molinari"

C. I. MOLINARI
MEMBER

Ontario Land Tribunal

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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.

ATTACHMENT 1

SCHEDULE "B"

ZONING BY-LAW AMENDMENT

Bill No.

CITY OF HAMILTON

BY-LAW NO.

To amend Zoning By-law No. 05-200 with respect to lands located at 3011 Homestead Drive, Glanbrook

WHEREAS the Ontario Land Tribunal, in its Decision/Order No. OLT-21-001799, dated the day of _____, 2023 approved the amendment to Zoning By-law No. 05-200, as herein provided;

AND WHEREAS this By-law conforms with the Urban Hamilton Official Plan upon adoption of Official Plan Amendment No. OPA ###;

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

1. That Schedule "A" – Zoning Maps, Map No. ### is amended by further amending the District Commercial (C6) Zone to the District Commercial (C6, XX,) Zone, for the lands known as 3011 Homestead Drive, 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 Exception:

"NO. Within the lands zoned District Commercial (C6, XX) Zone, identified on Map Number ### of Schedule "A" – Zoning Maps and described as 3011 Homestead Dr, Glanbrook, the following special provisions shall apply:

a) In addition to the uses permitted under Section 10.6.1, the following uses shall also be permitted:

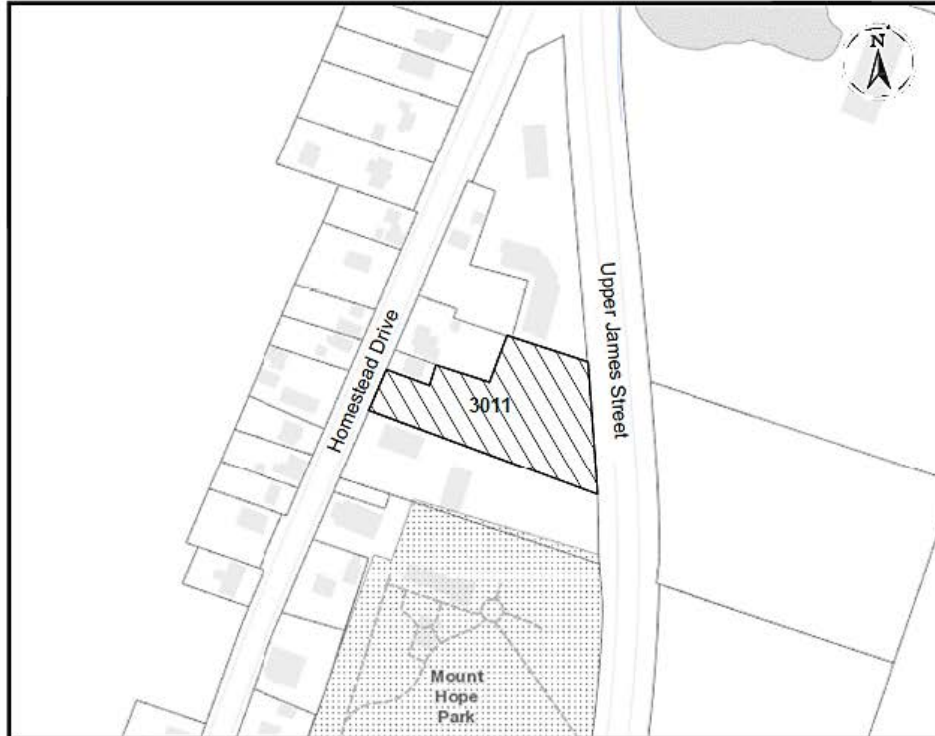
Contractor's Establishment
Commercial School
Computer, Electronic and Data Processing Establishment
Planned Business Centre
Production Studio
Research and Development Establishment
Surveying, Engineering, Planning or Design Business
Trade School
Tradesperson's Shop

Warehouse

- b) Notwithstanding Sections 10.6.3 a) ii), 10.6.3 b) i), and 10.6.3 c) ii), the following regulations shall apply:
- | | |
|--|--|
| i) Maximum setback from a streetline, except where a visibility triangle is required for a driveway access | 8 m to Rear Lot Line (Upper James St); 6.0 m to Front Lot Line (Homestead Dr). |
| | The maximum setback shall only apply to the nearest point of a building closet to the nearest adjacent streetline, and in the case of a Through Lot shall not be required from any part of a building to the opposite street line. |
| ii) Minimum Rear Yard setback (Upper James St) | 1.5 m |
| iii) Minimum Interior Side Yard Abutting a Residential or Institutional Zone or lot containing a residential use | 1.5 m |
- c) Section 5.2 h) shall not apply
- d) Notwithstanding the parking requirements for individual uses of Section 5.6 c), required parking for any building containing multiple permitted uses shall be at a rate of 1 space per 50 m² gross floor area, excepting any Warehouse use which shall require parking at a rate of 1 space per 30 m² of gross floor area which accommodates the Office portion of such use. For any building containing a single permitted use, the normal parking rates for individual uses of Section 5.6 c) shall apply.

3. That no building or structure shall be erected, altered, extended, or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the provisions of the District Commercial (C6, XX) Zone, subject to the special requirements referred to in Section No.2 of this By-law.
4. That this By-law No. 23-XX-OLT shall come into force and be deemed to come into force in accordance with Sub-section 34(21) of the *Planning Act*, either upon date of passage of this By-law or as otherwise provided in the said Sub-section.

APPROVED this _____, 2023



This is Schedule "A" of By-law No. 19-
Passed theday of2023

Clerk


Mayor

SCHEDULE "A"

Map Forming Part of
By-law No. 19- _____

to Amend By-law No. 05-200
Map 4E2

3011 Homestead Drive, Glanbrook

 Change in zoning by removing the Lands from the Deferred Development (DD) Zone in Zoning By-Law No. 464 and adding the lands to the District Commercial (C6#) Zone in Zoning By-law 05 200)

| | |
|--|---------------------|
| Scale: N.T.S. | File Name/Number: |
| Date: MM/DD/2023 | Planner/Technician: |
| PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT | |

