

1600 Kerns Road – Ward 1 Ontario Land Tribunal (OLT)

Appeal Update - September 14, 2023

At its meeting of September 14, 2023 Burlington City Council approved the recommendation of Confidential Legal Report L-51-23 to accept an offer to settle the issues in dispute between Wellings Planning Consultant Inc. on behalf of FGL Kerns Inc. and the City with respect to the non-decision appeal currently before the Ontario Land Tribunal (“OLT”). As part of this approval, Council approved the recommendation that the planning analysis attached as Appendix ‘B’ to L-51-23 be released publicly and posted on the City’s webpage under Planning and Development Applications for Ward 1, while retaining solicitor/client privilege over the balance of this matter in its entirety.

The settlement between the City and FGL Kerns Inc. resolves the issues in dispute between the City and FGL Kerns Inc. on the basis these parties will seek OLT approval of a revised development proposal and related Zoning By-law Amendment for the site. The revised development proposes the following:

1. Increase in commercial area abutting Kerns Road and Four Seasons Drive from 278 m² to 450 m².
2. Increase in landscape buffer abutting a residential zone to a minimum of 2.5-metres along the loading space area and 3-metres along the outdoor amenity area.
3. Increase in amenity area 14.4 m² per dwelling unit to 15.4 m² per dwelling unit.
4. Decrease in retirement dwelling units from 123 units to 115 units.
5. Decrease in front yard setback (Kerns Road) from 6-metres to 4.5-metres to provide a greater setback from the erosion hazard.

A copy of the planning analysis of the revised proposal is available on the development application webpage, along with a copy of the conceptual site plan for the revised development.

How does this impact the hearing scheduled to commence on October 2, 2023?

The City and FGL Kerns Inc. will be seeking approval of the proposed development, as revised, from the OLT. . The City’s support for the revised proposed development is contingent upon the Tribunal preferring the technical evidence of FGL Kerns Inc. over that of Conservation Halton regarding erosion hazards on the property. Should the Tribunal prefer the technical evidence of Conservation Halton regarding erosion hazards, the City would not support the approval of the revised development and would seek a refusal of the FGL Kerns Inc. appeal from Tribunal.

In addition to the City and FGL Kerns Inc., the Tribunal will hear evidence from the other parties to the appeal. The hearing is scheduled to commence on October 2, 2023.