

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 23, 2022

CASE NO(S): OLT-21-001021

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Burlington 71 Plains Inc.
Subject: Request to amend the Official Plan – City of Burlington to adopt the requested amendment
Existing Designation: Mixed Use Corridor Employment and Mixed Use Corridor – General
Proposed Designated: Mixed Use Corridor General and allow for site specific provisions
Purpose: To permit two mixed-use mid-rise buildings of 10 and 12 storeys
Property Address/Description: 53-71 Plains Road East and 1025 Cooke Boulevard
Municipality: City of Burlington
Approval Authority File No.: 505-11/17 and 520-22/17
OLT Lead Case No.: OLT-21-001021
OLT Case No.: OLT-21-001021
OLT Case Name: Burlington 71 Plains Inc. v. Burlington (City)

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

Applicant and Appellant: Burlington 71 Plains Inc.
Subject: Application to amend Zoning By-law No. 2020 - Neglect of the City of Burlington Norfolk County to make a decision
Existing Zoning: Mixed Use Corridor – Employment (MXE) and Mixed Use Corridor - General (MXG) Zones
Proposed Zoning: Mixed Use Corridor - General (MXG) Zone with site specific exceptions
Purpose: To permit two mixed-use mid-rise buildings of 10 and 12 storeys
Property Address/Description: 53-71 Plains Road East and 1025 Cooke Boulevard

Municipality: City of Burlington
Municipality File No.: 505-11/17 and 520-22/17
OLT Lead Case No.: OLT-21-001021
OLT Case No.: OLT-21-001022

Heard: October 31, 2022 by Video Hearing

APPEARANCES:

Parties

Counsel

Burlington 71 Plains Inc.

M. Lakatos-Heyward

City of Burlington

B. Hurley

MEMORANDUM OF ORAL DECISION DELIVERED BY P. TOMILIN ON OCTOBER 31, 2022 AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This was a settlement hearing in the matter of an appeal by Burlington 71 Plains Inc. (“Applicant” / “Appellant”) under s. 22(7) and s. 34(11) of the *Planning Act* (“Act”) against the failure of the City of Burlington to make a decision for an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) in relation to the proposed development of mixed-use buildings at 53 Plains Road East, 71 Plains Road East and 1025 Cooke Boulevard (“subject property”).

[2] The subject property is made up of of three parcels of land that are located centrally within the community of Aldershot, on the north side of Plains Road East, between Cooke Boulevard and Clearview Avenue. Together, the subject property creates a large ‘L’-shaped land assembly, with an overall area of 1.08 hectares and has frontages of 142.69 metres (“m”) on Plains Road East, 99.71 m on Cooke Boulevard, and 52.73 m on Clearview Avenue. Based on the City’s Zoning By-law (“ZBL”) definition for frontage, the front lot line for the land assembly is Clearview Avenue.

[3] The west half the subject property is currently occupied by a one-storey adult entertainment establishment and an attached one-storey motel. Those parcels are municipally known as 1025 Cooke Boulevard and 53 Plains Road East and contain surface parking between the buildings and Plains Road East as well as in the rear yard. The east half of the subject property, municipally known as 71 Plains Road East, is currently vacant and grassed.

[4] The subject property and surrounding lands to the north form part of a designated Major Transit Station Area (“MTSA”) and is planned to be redeveloped into a mixed-use and transit supportive area.

[5] The Tribunal had previously scheduled a nine-day hearing event for the hearing of these appeals starting on October 31, 2022. The parties have since advised the Tribunal that they have reached an agreement as to how development should proceed on the subject property and are now seeking an order of the Tribunal on approving the applications with the final order withheld so that the Applicant can continue to work with the City to provide the additional technical information that will inform the final Official Plan (“OP”) and ZBA.

[6] The only evidence before the Tribunal is the Affidavit of Evan Sugden, sworn October 27, 2022. Mr. Sugden is a qualified senior land use planner. He provided the Tribunal with a comprehensive overview of the applications in relation to the relevant policies.

REVISED PROPOSAL

[7] The original proposal was to permit the redevelopment of the subject property to allow for the construction of two mixed-use mid-rise buildings of 10 and 12 storeys with retail and service commercial uses at the street level and 450 residential units above.

[8] Following discussions with City Staff regarding the original proposal and the appeals, the Applicant made revisions to the original proposal.

[9] The settlement proposal is to redevelop the subject property with an 18-storey and 9-storey mixed-use buildings, which are stepped, and a 0.20-hectare park. The buildings have been designed to provide for a mid-rise (9- and 11-storey) built form along Plains Road East and a tall building element further north along Cooke Boulevard. The park is planned to be expanded further north when the abutting lands redevelop. The settlement still requires amendments to the City OP and ZBL to proceed.

[10] The buildings will have a commercial component at-grade along Plains Road East, Clearview Avenue, and Cooke Boulevard. Park frontages are planned to have at-grade residential uses and residential lobby entrances. The proposal includes a rear laneway that will provide access to loading areas for both buildings and is limited to 24 surface parking spaces, with the remaining 337 parking spaces located underground.

[11] Overall, the development will create 555 new residential dwelling units, comprised of 361 units in the west building (53 Plains Road East and 1025 Cooke Boulevard) and 194 units in the east building (71 Plains Road East).

[12] Although there are two separate buildings, the proposed development has been designed to function as one with a shared rear private laneway and a common pedestrian connection between the buildings to Plains Road East.

[13] The following is a summary related to the development proposal:

Category	Proposed
Number of buildings:	2
Gross Floor Area (Combined):	38,706 m ²
Residential Gross Floor Area (Combined):	34,281 m ²
Non-residential Gross Floor Area (Combined):	4,425 m ²
Ground Floor Area (Combined):	5,311 m ²
Floor Area Ratio ("FAR")	3.58
Maximum Number of Storeys:	18 and 9
Maximum Height of Building(s):	60 m
Total Residential Dwelling Units:	555
Total Residential Dwelling Units are comprised of:	

one-bedroom units	370 (67%)
one-bedroom + den unit	59 (11%)
two-bedroom units	97 (17%)
two-bedroom + den units	8 (1%)
townhouse (two-bedroom) units	21 (4%)
Total Parking Spaces Overall:	506
# of Underground Parking Levels:	2
# of Parking Spaces dedicated to Residents:	433
Parking Ratio (Per Residential Dwelling Unit)	0.78 spaces / unit
# of Parking Spaces dedicated to Visitors / Commercial Patrons:	73
Parking Ratio (Commercial Space)	1 space / 45 m ²
Total Bicycle Parking Spaces Overall:	118

[14] Mr. Sugden opined that the revised proposal aligns with the evolving context, as it proposes a mixed - use mid - to high-rise building format with transit supportive densities that will urbanize the site.

PLANNING ACT

[15] Section 2 of the Act, requires the Tribunal, in carrying out its responsibilities, to have regard to matters of provincial interest. The Tribunal finds that the proposed development and corresponding OPA and ZBA have sufficient regard for matters of provincial interest in particular:

(f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management services;

(h) the orderly development of safe and healthy communities;

(j) the adequate provision of a full range of housing, including affordable housing;

(o) the protection of public health and safety;

(p) the appropriate location of growth and development;

(q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and

(r) the promotion of built form that is well-designed and encourages a sense of place.

[16] The Tribunal agrees with Mr. Sugden and finds that the settlement proposal and the OPA and ZBA have regard to matters of provincial interest.

PROVINCIAL POLICY STATEMENT, 2020 (“PPS”)

[17] Section 3 of the Act requires that all decisions affecting planning matters be consistent with the policies contained in the PPS.

[18] Section 1 of the PPS outlines policies associated with future development and land use patterns.

[19] The Tribunal agrees with Mr. Sugden that, consistent with s. 1.1.1 of the PPS, the settlement proposal will contribute to a healthy, liveable and sustainable community through providing an efficient development and land use patterns, and accommodating appropriate affordable and market-based range and mix of residential units.

[20] The Tribunal finds that the proposal represents an efficient use of land and resources and increases residential density, beyond that which currently exists thereby allowing for an efficient use of land (s.1.1.3.1 and s.1.1.3.2).

[21] The subject property is within close proximity to a MTSA (Aldershot GO). The settlement proposal will allow for a more efficient use of land by accommodating additional residential density on a site which is currently underutilized. The development proposal will make efficient use of existing municipal infrastructure. The development proposal will contribute to the achievement of the City’s intensification targets, while facilitating a compact development to occur at an appropriate location and at an

appropriate density to make better use of land, resources, infrastructure and public service facilities (s.1.1.3.5 and s.1.1.3.6).

[22] The Tribunal is satisfied that the settlement proposal and the OPA and ZBA are consistent with the PPS.

GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE, 2020 (“GP”)

[23] The Tribunal finds that the proposed redevelopment conforms to several of the guiding principles that are established in s. 2.2.1.2 of the GP, forecasted growth to the 2051 planning horizon will be allocated based on settlement areas that have a delineated built boundary, have existing or planned municipal water and waste water systems, and can support the achievement of complete communities.

[24] Mr. Sugden opined the proposal conforms to the policies because it will introduce a compact urban form of development on the subject property in a transit-supportive manner within the urban built-up area.

[25] The Tribunal finds that the settlement proposal, OPA and ZBA conform to the GP.

HALTON REGION OFFICIAL PLAN (“ROP”)

[26] The ROP provides guidance to the municipalities in the preparation and implementation of their local Official Plans. The ROP builds on policies from the PPS and the GP. The policies and strategies of the ROP support growth and development that takes place in a sustainable manner by integrating environmental, social, economic and cultural considerations.

[27] In Mr. Sugden’s opinion, the proposed development conforms with policies 31, 50, 51, 55, 56, 57, 58, 72, 74, 75, 76, 77, 78, 79, 81, 84, 86, 172, and 173 of the ROP.

[28] Mr. Sugden explained that the primary role of the ROP is to provide broad policy

directions on strategic matters such as management of land and natural resources, growth strategies, housing, economic development, water and wastewater services, solid waste management, transportation, health and social services.

[29] The Tribunal finds that the settlement proposal, the OPA and ZBA maintain the general intent and purpose of the ROP.

CITY OF BURLINGTON OFFICIAL PLAN (“OP”)

[30] Mr. Sugden opined that the subject property is located within a Mixed Use Activity Area on Schedule A of the OP, is designated as Mixed Use Corridor – General and Mixed Use Corridor – Employment on Schedule B and is located along a Multi-Purpose Arterial road in Schedule J. Part III, s. 5.0 of the OP provides policy direction with respect to land use in the urban planning area. These mixed use areas are intended to foster community interaction and occur in linear and nodal forms provided for under four distinct land use designations on Schedule B.

[31] The Tribunal agrees with Mr. Sugden’s opinion that the settlement proposal conforms to the general intent of the in-force OP, with regard to the efficient utilization of land, developing within the urban area of the City, providing new homes, jobs, and transit supportive densities, and intensifying an underutilized site within an area intended for mixed uses.

[32] Mr. Sugden stated that the subject property is located within the Shadeland District as identified in the Plains Road Corridor Urban Design Guidelines. The urban design objectives for the district include consolidating and infilling commercial/industrial uses and preserving and enhancing the residential and home commercial uses, while also redeveloping the underutilized sites at Cooke Boulevards and Plains Road to provide an improved gateway/entry point to the industrial park.

[33] The Tribunal accepts Mr. Sugden’s opinions and finds that the proposed development is compatible with the character of the neighbourhood and is satisfied that

the settlement proposal and implementing the OPA and ZBA maintains the general intent and purpose of the OP.

CONCLUSION

[34] In determining this matter, the Tribunal has taken into consideration the concerns raised by the Participant and the Tribunal is satisfied that the settlement has addressed those concerns. The Tribunal considered the municipal records, the matters before Council, considered and accepted the uncontroverted land use planning evidence of Mr. Sugden. The Tribunal is persuaded by the evidence that the proposal is an efficient development of the underutilized subject lands within the MTSA, which promotes a liveable, healthy community and represents an appropriate form of intensification in a location that is planned and well-suited for it.

ORDER

[35] **THE TRIBUNAL ORDERS** that the appeals are allowed, in part, and the proposed development of the properties in accordance with the plans attached as Exhibit "C" to the Affidavit of Evan Sugden, filed with the Tribunal, is approved in principle.

[36] The Tribunal's Final Order is withheld pending written confirmation from the Parties that:

- a. the Zoning By-law and Official Plan amendment are in a form satisfactory to the Parties;
- b. The Applicant has submitted the following revised reports, to the satisfaction of the City of Burlington's Executive Director of Community Planning, Regulation and Mobility, and the Executive Director of Environment, Infrastructure and Community Services, or their designates:

- i. Civil Engineering Reports and Plans, showing the proposed grading and drainage, site servicing, stormwater management, shoring, and excavation of the proposed development;
- ii. Noise and Vibration Studies;
- iii. Landscaping Plans;
- iv. Shadow Study, prepared in accordance with the City of Burlington Shadow Study Guidelines and Terms of Reference, dated June 2020;
- v. Wind Study, including an analysis of wind tunnels;
- vi. Transportation studies, including an updated Transportation Impact, Parking, and Transportation Demand Management analysis;
- vii. Tree Inventory and Preservation Plan and Arborist Report, providing additional information and plans that outline the existing trees and tree protection/preservation methods;
- viii. Geotechnical Report;
- ix. Hydrogeological Study; and
- x. 3D Model of the proposed development.

[37] If the Parties do not submit the final drafts of the Zoning By-law Amendment and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order above have been satisfied, by July 23, 2023 the Parties shall provide the Tribunal with a written status report to the Tribunal.

[38] The Member shall remain seized for the purposes of reviewing and approving the

final drafts of the Official Plan Amendment and Zoning By-law Amendment and the issuance of the Final Order. The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call in case any difficulties may arise.

"P. Tomilin"

P. TOMILIN
MEMBER

Ontario Land Tribunal

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