

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



ISSUE DATE: March 03, 2020

CASE NO(S): PL190468

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

Applicant and Appellant:	Spruce Partners Inc. & Amico Properties Inc.
Subject:	Request to amend the Official Plan - Failure of City of Burlington to adopt the requested amendment
Existing Designation:	Downtown Residential Medium and High Density
Proposed Designated:	Downtown Residential Medium and High Density
Purpose:	To permit a seniors living campus
Property Address/Description:	1157 - 1171 North Shore Boulevard East
Municipality:	City of Burlington
Approval Authority File No.:	505-05/18
LPAT Case No.:	PL190468
LPAT File No.:	PL190468
LPAT Case Name:	Amico Properties 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:	Spruce Partners Inc. & Amico Properties Inc.
Subject:	Application to amend Zoning By-law No. 2020 - Refusal or neglect of City of Burlington to make a decision
Existing Zoning:	DRH – Downtown High Density Residential
Proposed Zoning:	DRH-X - Downtown High Density Residential with site-specific exception
Purpose:	To permit a seniors living campus
Property Address/Description:	1157 - 1171 North Shore Boulevard East

Municipality: City of Burlington
 Municipality File No.: 520-07/18
 LPAT Case No.: PL190468
 LPAT File No.: PL190469

Heard: February 11, 2020 in Burlington, Ontario

APPEARANCES:

Parties

Counsel

Spruce Partners Inc. and Amico Properties Inc. D. Baker

City of Burlington B. Hurley

MEMORANDUM OF ORAL DECISION DELIVERED BY C.J. BRYSON AND MARGOT BALLAGH ON FEBRUARY 11, 2020 AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] This hearing event was the first Case Management Conference (“CMC”) for the appeals of Spruce Partners Inc. and Amico Properties Inc. (“Appellants”) from the City of Burlington’s (“City”) failure to decide upon their official plan amendment (“OPA”) and zoning by-law amendment (“ZBA”) applications for their proposed development at 1157 to 1171 North Shore Boulevard East (“Subject Lands”) within the statutory timelines provided for in the *Planning Act*, R.S.O. 1990, c. P.13 (“*Planning Act*”).

[2] The proposed development is for a 17-storey, 419-unit seniors living complex, which is to provide a continuum of care to its residents. It is to front on North Shore Boulevard East, transition down to a 12-storey portion and then townhouse units to the north. There is a 12-storey apartment building to the east, followed by a series of nine to fourteen storey buildings, the QEW to the west, an O.P.P. detachment to the south, followed by the Joseph Brant Hospital, and single detached homes to the north.

[3] The affidavit of service was accepted by the Tribunal and entered as Exhibit 1.

[4] Three nearby residents sought and were granted participant status in the proceedings without objection: Terence Rose, Claudette Mancini and Cathy Berry. The participants were made aware that they may file a participant statement in advance of the hearing on the merits but may not provide oral evidence at the hearing or at any settlement hearing that may take place except upon filing of a participant statement pursuant to section 33.2 of the *Local Planning Appeal Tribunal Act*, S.O. 2017, c. 23 (“LPATA”), as amended, and an invitation of the presiding member to question them on their statement pursuant to s. 33(2)(b) of LPATA.

[5] Counsel for the parties were directed to include a clear deadline in the forthcoming draft Procedural Order (“PO”) for the service and filing of the participant statements in advance of the provision of expert witness statements and the hearing on the merits. They were also directed to advise the participants of any proposed settlement hearing and to provide them with at least 10 days’ notice of the settlement hearing to allow for provision of their participant statements at or before the settlement hearing. Counsel for the Appellants agreed to also facilitate a CD video conversion to a USB for Ms. Mancini, as an attachment to her forthcoming participant statement.

[6] Counsel for the Appellants did provide a draft PO to counsel for the City, in advance of this CMC, since the parties feel there is no reasonable possibility of settlement at this time. The City did not respond with a draft issues list for the draft PO but instead asked the Tribunal to adjourn the proceedings due to the passage of an interim control by-law (“ICB”) by the City in March 2019, in relation to the Subject Lands, the entire Urban Growth Centre and an area around the Burlington GO and bus station for purposes of determining Major Transit Station Areas and surrounding land uses and density permissions.

[7] The ICB was spent by the time of this CMC for the City recently passed an official plan amendment and a zoning by-law amendment as a result of the ICB and directed studies. The City, however, submitted that the appeal period and any appeals from those instruments should be finalized prior to this proceeding moving forward.

[8] Upon submissions of the parties, the Tribunal declined to adjourn the proceedings on this basis. Given the ICB is spent and the instruments flowing from it are known, the Tribunal may have regard to the results of the ICB in these proceedings, as is the normal course in many appeals where relevant instruments are passed but were not in force at the time of the applications being deemed complete and, which may be subject of appeals. Counsel for the Appellants also raised the Clergy principle, which may be fully argued in relation to these instruments at the hearing on the merits.

[9] Counsel for the City indicated that he would need until at least March 30, 2020 to get instructions on the draft issues list and to finalize the draft PO, given the adjournment was denied. The parties agreed the hearing would take five days given their understanding of the issues, including the new City instruments flowing from the ICB and arguments in that regard. They also agreed on a meeting of the proposed urban design, planning and traffic experts at least 90 days prior to the hearing and that any resulting agreed statement of facts be filed with the Tribunal forthwith after the meeting.

[10] Accordingly, the Tribunal set a further CMC by telephone conference call ("TCC") for **Friday, April 17, 2020 at 9 a.m.** for purposes of finalizing the draft PO. Individuals are directed to call **(416) 212-8012** or Toll Free **1-866-633-0848** on the assigned date at the correct time. When prompted, enter the code **1006967#** to be connected to the call. It is the responsibility of the persons participating in the call to ensure that they are properly connected to the call and at the correct time. Questions prior to the call may be directed to **Brandon Stevens**, the Tribunal's Case Coordinator, at **(416) 326-6785**. The draft PO is to be filed with the Tribunal at least one week prior to the CMC. Any motions

in regard to the draft PO are to be heard at the next CMC and all motion materials are to be served and filed in accordance with the Local Planning Appeal Tribunal *Rules of Practice and Procedure*.

ORDER

[11] The directions in this Decision are so ordered.

[12] The adjournment request of the City of Burlington on the basis of the ICB and instruments flowing from it is denied.

[13] This panel is not seized.

[14] There will be no further notice.

“C.J. Bryson”

C.J. BRYSON
MEMBER

“Margot Ballagh”

MARGOT BALLAGH
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

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