

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



**ISSUE DATE:** November 13, 2020

**CASE NO(S):**

PL171234

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: First Capital (Appleby) Corporation  
Subject: Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment  
Existing Designation: Community Commercial  
Proposed Designated: Site specific – *To be determined*  
Purpose: To permit two 17-storey residential condominium (apartment) buildings to be integrated with existing commercial development  
Property Address/Description: 5111 New Street  
Municipality: City of Burlington  
Approval Authority File No.: 505-01/14  
OMB Case No.: PL171234  
OMB File No.: PL171234  
OMB Case Name: First Capital Corporation 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: First Capital (Appleby) Corporation  
Subject: Application to amend Zoning By-law No. 2020 - Neglect of the City of Burlington to make a decision  
Existing Zoning: CC1- 402  
Proposed Zoning: CC1 - Modified  
Purpose: To permit two 17-storey residential condominium (apartment) buildings to be integrated with existing commercial development  
Property/Address/Description: 5111 New Street

Municipality: City of Burlington  
Municipality File No.: 520-05/14  
OMB Case No.: PL171234  
OMB File No.: PL171235

**Heard:** November 2, 2020 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

First Capitol (Appleby) Corporation	Eileen Costello
City of Burlington	Blake Hurley
Loblaw Properties Limited	Chantal deSereville

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID BROWN AND T.F. NG  
ON NOVEMBER 2, 2020 AND INTERIM ORDER OF THE TRIBUNAL**

**INTRODUCTION**

[1] The matters before the Tribunal are two appeals filed by First Capitol (Appleby) Corporation (the “Applicant”) against the failure of the City of Burlington (the “City”) to make a decision with respect to an Application for Official Plan Amendment (“OPA”) and an Application to Amend the Zoning By-law (“ZBA”) within the prescribed timeframes as set out in the *Planning Act* (the “Act”). The applications are in respect to lands located at 5111 New Street (the “Subject Lands”).

[2] The Parties have endorsed Minutes of Settlement in support of a revised proposal (the “Settlement Proposal”) which responds to the concerns of the Parties and addresses the issues of the ratepayers. The Settlement Proposal proposes three distinct residential apartment towers having reduced heights, residential uses at grade replacing commercial uses with an increased setback, and a revised design to create a more urban feel.

[3] In support of the Settlement Proposal, the Applicant filed an affidavit sworn by Glenn Wellings dated October 22, 2020. Mr. Wellings is a Registered Professional Planner and based on his experience and expertise as set out in his affidavit, the Tribunal finds that he is qualified to provide opinion evidence in the area of land-use planning. The Affidavit of Mr. Wellings is filed as Exhibit No. 1.

[4] The City filed an affidavit sworn by Kyle Plas dated October 23, 2020 in support of the Settlement Proposal. Mr. Plas is a Registered Professional Planner and is currently the Coordinator of Development Review with the City. Based on his experience and expertise as set out in his Affidavit, the Tribunal finds that he is qualified to provide opinion evidence in land-use planning. The Affidavit of Mr. Plas is filed as Exhibit No. 2.

[5] The Applicant filed recommended Conditions of Approval for consideration by the Tribunal as Exhibit No. 3.

[6] Ms. deSereville confirmed that Loblaw Properties Limited (“Loblaws”) supports the Settlement Proposal.

[7] No Participant Statements were filed with the Tribunal.

[8] The Tribunal, having considered the uncontroverted testimony of Mr. Wellings and Mr. Plas, the consent of the Parties to the Settlement Proposal, and having reviewed the materials filed with the Tribunal, allows the Appeals in part subject to conditions for the reasons set out below.

## **PLANNING EVIDENCE**

[9] In support of the Settlement Proposal, Mr. Wellings testified that the Settlement Proposal is a result of discussions with the City, Loblaws and the ratepayers. The result is that the proposed development was revised to reduce the overall height of the proposed apartment towers and the creation of three towers from the two originally proposed. Urban design considerations resulted in the reduction of angular planes and

reduction in balcony projections. The Settlement Proposal proposes residential units at grade replacing the commercial space and the setback has been increased to create a greater landscaped front yard to complement the residential uses opposite the Subject Lands. Mr. Wellings advised that the three towers have been designed to function independently in respect to access, garbage collection, and amenity areas.

[10] Mr. Wellings advised that a community meeting was held on July 31, 2020 and City Council approved the Settlement Proposal on August 24, 2020.

[11] Mr. Wellings reviewed the draft OPA explaining that the OPA will exempt the Subject Lands from the Community Commercial policy as it relates to the ratio of residential floor area to commercial floor area within the designation. He explained that the intent of the policy is to ensure that the commercial function is protected, and he opined that the Settlement Proposal will maintain the purpose of the policy by preserving the commercial use of the Subject Lands. A review of the draft ZBA reflects the commercial and residential uses of the Subject Lands and contains site specific standards to direct the development of the Subject Lands.

[12] Mr. Wellings opined that the Settlement Proposal conforms to the A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) (the "Growth Plan"). He explained that at the time the application was submitted the previous version of the Growth Plan was in force and he has addressed the current version of the Growth Plan in his Affidavit. In respect to the Provincial Policy Statement (2020) ("PPS"), Mr. Wellings testified that the Settlement Proposal is consistent with the PPS.

[13] The Region of Halton (the "Region") Official Plan ("OP") designates the Subject Lands as an Urban Area. The Region OP supports growth that is compact and transit supportive, encourages complete communities, and supports intensification. Mr. Wellings opined that the Settlement Proposal represents intensification and is a compact, transit supportive form of growth. He noted that the Region is supportive of the Settlement Proposal.

[14] Mr. Wellings addressed the City OP stating that the Settlement Proposal conforms to the City OP as it envisions medium and high density residential uses for the Subject Lands. The OPA addresses the Community Commercial designation as it relates to the floor area restriction and ensure conformity of the ZBA. In reviewing the ZBA, Mr. Wellings opined that the development standards included are appropriate and reflect the terms of the Settlement Proposal.

[15] In respect to the recommended conditions of approval, Mr. Wellings submitted that they are appropriate to implement the Settlement Proposal and represent good planning. He confirmed that the Applicant and the City are working on the final form of the ZBA and are in general agreement with the form of the OPA. The Functional Servicing Report has been filed and the Shadow Study Opinion Letter is being finalized. He explained that the Residential Development Agreement is a typical requirement of the Site Plan process including the clauses itemized in the recommended conditions.

[16] In response to a question from the City, Mr. Wellings advised that including a Holding provision on the ZBA would be appropriate to address updating the Environmental Site Assessment that was filed with the original application. Mr. Wellings noted that the City typically includes wording to permit any required works or remediation to occur prior to the approval of a development application and he recommended that the City apply that practice in this instance.

[17] Mr. Plas testified that the Settlement Proposal has regard for matters of provincial interest as itemized in s. 2 of the Act, is consistent with the PPS and conforms to the Growth Plan. He opined that the Settlement Proposal conforms with the Region OP and conforms to the City OP. The OPA protects the community commercial policies ensuring that the primary commercial function is maintained. The ZBA is currently being reviewed by the City to ensure that it captures the intent of the Settlement Proposal and the proposed Holding provision will properly address the introduction of a sensitive land use on the site. Mr. Plas opined that the recommended conditions of approval are appropriate.

[18] The planners are in agreement that the Settlement Proposal adequately addresses the concerns and issues identified by the commenting agencies and the ratepayers. Further, they agreed that the Settlement Proposal is consistent with the PPS, conforms to the Growth Plan, conforms with the Region OP and the City OP, and will facilitate the further development of the Subject Lands that is compatible with the surrounding lands uses.

[19] Messrs. Wellings and Plas opined that the Settlement Proposal and implementing planning instruments represent good planning and are recommended for approval.

### **ANALYSIS AND FINDINGS**

[20] The Tribunal has considered the uncontroverted evidence and Affidavits of Messrs. Wellings and Plas and the documents filed, accepts their conclusions.

[21] The Tribunal finds that the Settlement Proposal is consistent with the 2020 PPS as it represents an appropriate level of intensification within the urban boundary, efficient use of land, provides a range and mix of housing types that promote the use of active transportation and transit, and an appropriate density and built form that represents compatible intensification.

[22] In respect to the Growth Plan, the Tribunal finds that the Settlement Proposal facilitates compact development, represents an efficient use of land and infrastructure, is transit supportive, and will contribute to a complete community. The Tribunal is satisfied that the Settlement Proposal conforms to the Growth Plan.

[23] The Region OP designates the Subject Lands Urban Area. The Settlement Proposal proposes an urban form that is complementary to existing developed areas, making efficient use of land and services and providing a variety of housing to satisfy different needs. The Tribunal finds that the submissions demonstrate conformity with these policies.

[24] In consideration of the City OP and the OPA, the Tribunal finds that the Settlement Proposal provides an appropriate development of an underutilized parcel of land. The Settlement Proposal proposes development that is served by various modes of transportation and is located in close proximity to jobs, shopping and recreation areas. The Tribunal agrees that the Settlement Proposal conforms to the City OP and the ZBA appropriately implements the City OP.

[25] The Tribunal in consideration of the above is satisfied that Settlement Proposal has had appropriate regard for the matters set out in s. 2 of the Act and represents good planning. The Tribunal finds that the conditions recommended for approval are appropriate for the Settlement Proposal.

### **DECISION AND ORDER**

[26] The Tribunal Orders that the Appeals are allowed in part and approves the OPA and the ZBA in principle as set out in the Settlement Proposal.

[27] The Tribunal withholds its Final Order subject to the City providing to the Tribunal the draft instruments of the OPA and the ZBA in their final form, satisfactory to the Applicant, for approval by the Tribunal and subject to the following conditions being fulfilled:

1. The City provides to the Tribunal correspondence confirming that:
  - a) The City has completed its review of the updated Functional Servicing Report filed by the Applicant and any Addendum which may be required;
  - b) The City is in receipt of an updated Shadow Study Opinion Letter, which concludes that the shadows resulting from the proposed development do not result in unacceptable impacts to adjacent residential properties or within the proposed development site, has been submitted to the City's satisfaction; and

2. The City provides to the Tribunal confirmation that a Residential Development Agreement has been executed with the Applicant which includes the following:
- a) A requirement for the Applicant to demonstrate compliance with the Ministry of Environment, Conservation and Park Publication NPC-300 Class 1 stationary noise source guideline limits at this site as part of the site plan approval process;
  - b) A requirement that the Applicant provide an updated quantitative wind study (i.e. wind tunnel test) as part of the subsequent site plan to quantify wind conditions and, if needed, to develop wind control solutions; and
  - c) The Applicant agrees that the site plan submission will be substantially in accordance with the plans prepared by CMV Group Architects, dated July 2020 (Exhibit No. 1 pages 80, 81 and 82).

*"David Brown"*

DAVID BROWN  
MEMBER

*"T.F. Ng"*

T.F. NG  
MEMBER

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

A constituent tribunal of Ontario Land Tribunals

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