Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: January 30, 2024 **CASE NO(S).:** OLT-22-004680

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

Applicant and Appellant:	FGL Kerns Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit the development of a four-storey retirement home with ground floor for commercial use
Reference Number:	520-02/21
Property Address:	1600 Kerns Road
Municipality/UT:	Burlington/Halton
OLT Case No.:	OLT-22-004680
OLT Lead Case No.:	OLT-22-004680
OLT Case Name:	FGL Kerns Inc. v. Burlington (City)

Heard: October 3 and 4, 2023 by video hearing

APPEARANCES:

Parties	**Counsel/Representative***
FGL Kerns Inc.	D. Baker
City of Burlington	B. Hurley and A. Peebles
Regional Municipality of Halton	B. Maione
Halton Region Conservation Authority	K. Stavrakos
Douglas Stewart	self-represented*

DECISION DELIVERED BY HUGH S. WILKINS AND INTERIM ORDER OF THE TRIBUNAL

Link to Interim Order

INTRODUCTION

[1] This Decision arises from the hearing of an appeal brought by FGL Kerns Inc. ("Appellant") concerning the failure of the City of Burlington ("City") to make a decision on the Appellant's application for a zoning by-law amendment to facilitate development on the lands located at 1600 Kerns Road ("subject property"). The Appellant proposes the development of a four-storey retirement home with retail and/or commercial uses at the ground level.

[2] In October 2022, the Appellant appealed the City's failure to make a decision on its application.

[3] At a Case Management Conference ("CMC"), held on February 21, 2023, the Tribunal granted Party status to the Regional Municipality of Halton ("Region"), Halton Region Conservation Authority, Joanna Wice, and Kirstin Silvera. It granted Participant status to Condominium Corporation No. HCC32. At a second CMC, held on April 25, 2023, the Tribunal granted Party status to Douglas Stewart.

[4] The subject property is 0.8 hectares in size. It currently contains a small commercial plaza with front yard parking. The proposed development would replace this with a 115-unit retirement home and 450 square metres ("m^2") of ground floor retail and/or commercial space. There would be 71 parking spaces based on a parking standard of 0.5 spaces per retirement home unit and 4 spaces per 100 m^2 of retail or commercial space. Most of the parking would be underground. Fourteen spaces would be on the surface.

[5] The subject property is designated as “Urban Area” and within the built boundary in the Region’s Official Plan.

[6] The subject property is designated “Residential Areas” and “Neighbourhood Commercial” in the City’s 1997 Official Plan. A new official plan was adopted by the City on October 7, 2020, and approved with modifications by the Region on November 26, 2020. It is currently under appeal. The subject property is designated as “Mixed Use Nodes and Intensification Corridors”, “Secondary Growth Area”, and “Local Centre” under the City’s 2020 Official Plan.

[7] The subject property is presently zoned “CN2 (Neighbourhood Commercial)” in the City’s Zoning By-law No. 2020. The proposed Zoning By-law Amendment would rezone the subject property to “CN2-526 (Neighbourhood Commercial Exception)” and “O2 (Open Space)”.

[8] On October 3, 2023, the Appellant informed the Tribunal that it had reached a settlement with the City, the Region, Halton Region Conservation Authority, Joanna Wice, and Kirstin Silvera. The issues raised by Mr. Stewart remained outstanding.

[9] The hearing was held on October 3 and 4, 2023, by video hearing.

ISSUES

[10] The issues that the Tribunal must address when adjudicating a zoning by-law amendment appeal are whether the proposed instrument:

a) is consistent with policy statements issued by the Minister (in this case, the Provincial Policy Statement, 2020 (“PPS”));

b) conforms with applicable provincial plans (in this case, the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”));

c) conforms with applicable official plans (in this case, the Region's Official Plan and the City's 1997 Official Plan); and,

d) represents good planning.

[11] The Tribunal must have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and have regard to the information and materials that City Council received in relation to the matters under s. 2.1(2) of the *Planning Act*.

[12] The Tribunal's practice is to also have regard to new official plans that have since been adopted but were not in force at the time of the appellant's application for a zoning by-law amendment. As discussed further below, the Appellant requests that, in the present case, the Tribunal consider whether the proposed Zoning By-law Amendment conforms with the City's 2020 Official Plan and withhold the issuance of its decision until the relevant policies of the City's 2020 Official Plan come into effect in relation to the subject property.

EVIDENCE AND SUBMISSIONS

[13] The Appellant and Mr. Stewart provided evidence and submissions at the hearing.

[14] The City, the Region, and Halton Region Conservation Authority attended the hearing, but did not call witnesses. They each support the proposed Zoning By-law Amendment as modified under the terms of the proposed settlement ("modified proposed Zoning By-law Amendment").

Appellant's Evidence and Submissions

[15] Glenn Wellings provided evidence on behalf of the Appellant. The Tribunal qualified him to provide opinion evidence in the area of land use planning.

Proposed Settlement

[16] Mr. Wellings explained that based on the Appellant's proposed settlement with the City, the Region, Halton Region Conservation Authority, Ms. Wice, and Ms. Silvera, there would be several modifications to the proposed Zoning By-law Amendment. He said the number of retirement home units would be reduced from 118 to 115, the ground floor commercial space would be increased from 278 m^2 to 450 m^2, parking for the commercial component of the proposed development would be adjusted, approval of an appropriate setback from the stable top of bank of adjacent valleylands would be required, and landscaping, fencing, and stepbacks would be required at the southern end of the proposed development. He said that lands comprising the setback from the adjacent stable top of bank to the area to be developed would be zoned Open Space (O2) and conveyed to public ownership. To accommodate this, he said the proposed building would be shifted 1.5 metres ("m") closer to Kerns Road than originally planned, resulting in a decreased setback from the road from 6 m to 4.5 m.

PPS and Growth Plan

[17] Mr. Wellings opined that the modified proposed Zoning By-law Amendment is consistent with the PPS. He said the subject property is located in a Settlement Area and the modified proposed Zoning By-law Amendment would facilitate a development that assists in meeting the long-term needs of existing and future residents by providing housing for older people. He said it promotes the efficient use of land and available infrastructure and contributes to the range of available housing options through intensification. He said the modified proposed Zoning By-law Amendment would protect

natural features and areas and adjacent valleylands for the long term. He said the proposed development would be located outside of any hazardous areas.

[18] Mr. Wellings opined that the modified proposed Zoning By-law Amendment conforms with the Growth Plan. He said the subject property is located in the City's delineated built boundary. He stated that the modified proposed Zoning By-law Amendment conforms with the Growth Plan's guiding principles supporting the creation of complete communities, the prioritization of intensification, the provision of a range and mix of housing options, and the protection of the natural heritage features and functions. He reiterated that the proposed development would efficiently use land and infrastructure and support a range and mix of housing options. He also said it would be transit supportive. He stated that the proposed setback from the stable top of bank of the adjacent valleylands addresses natural hazard concerns.

The Region's Official Plan

[19] Mr. Wellings opined that the modified proposed Zoning By-law Amendment conforms with the Region's Official Plan. He stated that the subject property is designated as "Urban Area" and lies within the built boundary under the Region's Official Plan. He said the proposed development would be compact, fully serviced, and transit supportive and it would promote intensification and increased densities in conformity with the Region's Official Plan. He said it would provide special needs housing, protect regional natural heritage systems, and be located outside hazard lands.

The City's 1997 Official Plan

[20] Mr. Wellings opined that the modified proposed Zoning By-law Amendment conforms with the City's 1997 Official Plan. He stated that the subject property is designated as "Residential Areas" and "Neighbourhood Commercial" under the Plan and that Kerns Road is classified as a collector road. He said policy 2.2.2(a) in Part III

of the City's 1997 Official Plan permits a broad range of dwelling types in Residential Areas, including retirement homes and long-term care facilities. Mr. Wellings stated that policy 2.5.2(a) provides intensification criteria for development within established neighbourhoods. Regarding these criteria, he opined that there are adequate municipal services to accommodate the proposed development. He stated that off-street parking would be adequate, because most residents would not be using cars. He said parking would be intended mostly for staff and visitors. Mr. Wellings said a transportation study was completed, which concluded that the existing plaza generates more trips than the proposed development would generate and that the proposed parking supply would be adequate and meet future parking demand. He reiterated that the subject property is located close to public transit and opined that the existing municipal transportation system can accommodate the proposed development. He stated that it would access Kerns Road, which is a collector road with transit connecting to the City's GO stations. He opined that the proposed development would be compatible with the existing neighbourhood in terms of scale, massing, height, siting, setbacks, coverage, and parking and there would be appropriate transition between nearby existing buildings and the proposed development. He said the transition between townhouses to the south would be addressed through stepbacks to achieve a 45-degree angular plane and setbacks with landscaping and fencing. He said there would be no balconies facing that direction and no privacy issues. He also said there would be no shadow impacts. He said impacts on existing vegetation would not be significant and landscaping would be provided to compensate for the loss of existing trees. He said access to community and other services would be ensured through a shuttle service for residents. He also said there would be no impacts on the redevelopment potential of adjacent properties.

[21] Mr. Wellings opined retirement homes are permitted as of right in Residential Areas under policy 2.2.2(a) in Part III of the City's 1997 Official Plan. He said policy 2.6.2(e) encourages maintaining the supply of special needs housing in the City and policy 2.6.2(g) states that the supply and integration of seniors' housing is encouraged throughout the City. Mr. Wellings noted that policy 4.6.2(b) on Neighbourhood Commercial areas provides for residential uses in the second and/or third storey of a

retail/commercial building, but he opined that this is not applicable because the proposed development would not be a “retail/commercial building” and he reiterated that retirement homes are permitted within residential areas across the City. He noted that there is no specified height restriction in the City’s 1997 Official Plan for retirement homes.

The City’s 2020 Official Plan

[22] Mr. Wellings said the subject property is designated under the City’s 2020 Official Plan as “Mixed Use Nodes and Intensification Corridors”, “Secondary Growth Area”, and “Local Centre”, and Kerns Road is classified as a “Neighbourhood Connector”.

[23] Regarding the Local Centre designation in the City’s 2022 Official Plan, Mr. Wellings said the objectives for the Local Centre designation in policy 8.1.3(5.1) include the provision of small areas of concentration for mixed use development, a limited range of small-scale retail and service commercial uses and public service facilities, and the vertical integration of land uses. He said policy 3.1.4(2)(a) permits assisted and special needs housing throughout the urban area of the City where residential uses are permitted and where transit, retail, and public service facilities are accessible. He said this includes Local Centre areas. He said policy 8.1.3(5) permits a building height of four storeys in these areas.

[24] Mr. Wellings said the proposed development would provide compact built form and vertically integrated residential development along with retail and service facilities retaining the local commercial function on the subject property. He opined that the design of the proposed development would promote a pedestrian-oriented scale by replacing the existing surface parking area with appropriate built form. He said a proposed service laneway envisioned by the proposed development would be consistent with the existing service corridor serving the commercial plaza.

Section 2 of the Planning Act and Other Issues

[25] Mr. Wellings stated that the proposed development has regard to the applicable matters of provincial interest set out in s. 2 of the *Planning Act*, including those related to the efficient use of land and infrastructure, the provision of a range of housing options in an area, the appropriate location for growth and development, and appropriate built form. He reiterated that the proposed development would be fully serviced on municipal services, contribute to a range of housing opportunities, and would be transit supportive with bus service on Kerns Road.

[26] The Appellant submits that s. 24(2) of the *Planning Act* states that the City may pass a by-law that may not conform with the existing official plan, but will conform with a new amended plan, if that amendment comes into effect. Based on its proposed settlement with the City, the Region and the Halton Region Conservation Authority, the Appellant requests that the Tribunal allow the appeal, in part, but withhold its Order until policy 3.1.4(2)(a) of the City's 2020 Official Plan, which permits assisted and special needs housing throughout the urban residential area of the City, comes into effect in relation to the subject property.

Mr. Stewart's Evidence and Submissions

[27] Allan Ramsay provided evidence on behalf of Mr. Stewart. The Tribunal qualified him to provide opinion evidence in the area of land use planning.

PPS, Growth Plan, and the Region's Official Plan

[28] Mr. Ramsay opined that the modified proposed Zoning By-law Amendment is not inconsistent with the PPS and that it generally conforms with the Growth Plan. He did not specifically opine on whether the modified proposed Zoning By-law Amendment conforms with the Region's Official Plan.

The City's 1997 Official Plan

[29] Mr. Ramsay opined that the modified proposed Zoning By-law Amendment does not conform with the City's 1997 Official Plan. He said the guiding principles in policy 3.0(a) of Part III of the City's 1997 Official Plan state that the Plan aims to create an attractive, liveable community with a mix of land uses, functional community design, and integration of land uses. He opined that the intended use of the subject property is for retail and commercial uses and that the proposed residential development would not support this. He said it would distract from the functional community design set out in the Plan. He opined that the modified proposed Zoning By-law Amendment would facilitate a development with a total floor area that is larger than the maximum building area for small-scale neighbourhood commercial sites. He said it would result in overdevelopment of the subject property with massing that is not in keeping with the surrounding area.

[30] Mr. Ramsay stated that policy 4.6.2(b) in Part III of the City's 1997 Official Plan states that residential uses are only permitted on the second and/or third storey of a retail/commercial building. He opined that the proposed development would be a residential building with limited retail and commercial uses and not a proper retail and commercial building as envisioned under the Plan. He said a four-storey residential development, such as the proposed development, is not permitted. He stated that the proposed amount of retail commercial floor area would not retain the retail and commercial focus required for Neighbourhood Commercial areas.

[31] Mr. Ramsay also opined that the proposed development would not comply with the intensification criteria in policy 2.5.2 of Part III of the City's 1997 Official Plan. He said the nearby public transit on Kerns Road is inadequate with infrequent bus service. He said the proposed development would not be compatible with the local neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking, or amenity areas. He said the proposed development would be too large and too close to neighbouring buildings. He said there would not be proper transition

between existing buildings and the proposed development. He also stated that the subject property is not located close enough to community services, shopping, or health care. He said the proposed development would result in the loss of trees and would result in privacy and overlook impacts. He also said the location of the access driveway to the underground parking garage and the outdoor services areas would result in nuisance impacts.

The City's 2020 Official Plan

[32] Mr. Ramsay opined that the modified proposed Zoning By-law Amendment does not conform with the City's 2020 Official Plan. He said the modified proposed Zoning By-law Amendment does not satisfy the objectives in policy 8.1.3(1) for the "Mixed Use Nodes and Corridors" areas. He said the proposed retirement home is too intensive, would not provide for proper integration with the area, and would replace necessary neighbourhood commercial services with residential uses. He reiterated that the subject property is not well served by transit and the scale and massing of the proposed development is out of character with the area's existing and planned context. He reiterated that it would not be compatible with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, and parking and would result in adverse privacy and overlook impacts.

[33] Regarding the Local Centre objectives in the City's 2020 Official Plan policy 8.1.3(5.1), Mr. Ramsay said the proposed retirement home with limited retail and commercial uses constitutes a residential development and would not support the objective of creating small areas of concentration for mixed use development. He reiterated that the limited retail and commercial uses would not serve the needs of local residents or protect the commercial function of the existing Local Centre. He also said it would not support the objective of creating a vibrant day and night activity area. Regarding conformity with the Local Centre provisions in policy 8.1.3(5.2), he said the proposed retirement home would not provide the necessary range of retail and commercial uses to serve the needs of local residents. He also said policy 8.1.3(5.2)(ii)

states that residential dwelling units are only permitted in the upper storeys of retail/commercial buildings and that the proposed development would have a residential floor area that exceeds the area that should be permitted. However, he did not disagree that special needs housing is permitted on the subject property.

Section 2 of the Planning Act and Other Issues

[34] Mr. Ramsay opined that the modified proposed Zoning By-law Amendment does not have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. He stated that the proposed development would result in planning conflicts as its massing would result in privacy and overlook impacts on neighbouring properties. He opined that it would be located in an established residential neighbourhood, which is not an appropriate location for the proposed type of growth and development due to its massing, which would not respect the existing low-rise character of the area. Similarly, he stated that the proposed massing and scale of the development would not result in appropriate built form that is well designed, encourages a sense of place, or provides public spaces. He said it would not fit harmoniously with the existing neighbourhood context, would not be well integrated into the streetscape, and would not contribute to a sense of place within the established neighbourhood setting.

[35] Mr. Ramsay opined that the modified proposed Zoning By-law Amendment does not represent good planning as it does not support the planned function for the area, would result in overdevelopment, and is not compatible with the surrounding area.

Participant's Submissions

[36] The nearby Condominium Corporation No. HCC32 is a Participant. It is opposed to the proposed Zoning By-law Amendment. It provided written submissions raising concerns regarding traffic and parking impacts and the design of the proposed development. It submits that the size and massing of the proposed development would not be in keeping with the character of the area. It argues that the elevation of the

subject property would make the proposed development appear taller than it is. It submits that it would have shadow, temperature, and privacy impacts on neighbouring properties. It also raises concerns regarding the location of the proposed servicing laneway adjacent to neighbouring properties.

ANALYSIS AND FINDINGS

The City's 1997 Official Plan

[37] Regarding the size and massing of the proposed development, policy 2.5.2 on housing intensification in Part III of the City's 1997 Official Plan requires that development must be compatible with the existing character of the area. It states in part:

> 2.5.2 General Policies
>
> a) The following criteria shall be considered when evaluating proposals for housing intensification within established neighbourhoods:
>
> […]
>
> (v) compatibility is achieved with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking and amenity area so that a transition between existing and proposed buildings is provided;

[38] Part VIII of the City's 1997 Official Plan defines "compatible" as:

> Compatible – Development or re-development that is capable of co-existing in harmony with, and that will not have an undue physical (including form) or functional adverse impact on, existing or proposed development in the area or pose an unacceptable risk to environmental and/or human health. Compatibility should be evaluated in accordance with measurable/objective standards where they exist, based on criteria such as aesthetics, noise, vibration, dust, odours, traffic, safety and sun-shadowing, and the potential for serious adverse health impacts on humans or animals.

[39] The neighbourhood surrounding the subject property consists mostly of low-rise residential dwellings. The existing zoning in the area permits buildings up to three

storeys in height. The structure and massing of the proposed development would not be the same as the existing adjacent buildings, but, based on the evidence presented to the Tribunal, the modified proposed Zoning By-law Amendment would facilitate development that is capable of co-existing in harmony with existing or proposed development in the area. The evidence before the Tribunal is that, based on the modified proposed Zoning By-law Amendment, the proposed development would have no shadow, noise, odour, or other impacts. The Appellant also produced evidence that there would be no parking, transportation, or environmental impacts. Based on the setbacks from the stable top of bank required under the modified proposed Zoning By-law Amendment, the Tribunal finds that there are no hazardous land issues, and the Tribunal finds the proposed development does not have the potential for causing serious adverse health impacts on human beings or animals. The Tribunal notes that there are no specified height limits in the City's 1997 Official Plan for retirement home buildings and, in terms of scale, massing, height, siting, setbacks, coverage, and amenity area, the Tribunal finds that the modified proposed Zoning By-law Amendment would facilitate development that is compatible with the area and would provide appropriate transition between the existing and proposed buildings. The proposed development would have greater massing and would be slightly taller than adjacent buildings, but, given the context and proposed building design, the Tribunal finds that the proposed massing and height would be in keeping with the character of the area and would not cause adverse visual impacts. It would constitute intensification at the edge of valleylands on the periphery of an existing residential neighbourhood on a property abutting and having direct vehicular access to roads and a built form, scale, and profile of development that is well integrated with the existing neighbourhood.

[40] Policy 4.6 in Part III of the City's 1997 Official Plan sets out objectives and policies for Neighbourhood Commercial designated areas. It states, in part (emphasis added):

> 4.6 Neighbourhood Commercial Designation
>
> 4.6.1 Objective

> a) To provide opportunities for limited neighbourhood commercial centres within and at the periphery of residential neighbourhoods in locations that meet residents' day-to-day and weekly goods and service needs.
>
> 4.6.2 Policies
>
> a) The orderly development and distribution of neighbourhood commercial areas shall be encouraged with the designation of neighbourhood commercial shopping areas on Schedule B, Comprehensive Land Use Plan - Urban Planning Area, with the following functions:
>
> (i) small-scale neighbourhood commercial areas are intended to provide a limited range of retail and service commercial uses and community facilities that serve the daily and weekly needs of the immediate neighbourhood. These shopping areas will have a site area of approximately 1.0 ha and maximum building area of approximately 2,500 sq. m;
>
> […]

[41] Mr. Stewart argues that the proposed development would replace the necessary commercial and retail uses on the subject property with residential uses. However, based on the modified proposed Zoning By-law Amendment, the Tribunal notes that there would still be reasonable commercial and retail uses on the site. It would not be on the scale of the commercial and retail uses at the existing plaza, but it would continue to provide for these uses to meet local needs. The Tribunal finds that the proposed residential development would support the functional community design set out in the City's 1997 Official Plan in this regard.

[42] Policy 4.6.2(b) focuses on residential uses in retail/commercial buildings. It states:

> (b) Residential uses may be permitted in the second and/or third storey of retail/commercial buildings.

The subject property is designated as being in a Residential Area under Schedule A of the City's 1997 Official Plan. Policy 4.6.1 in Part III of the 1997 Official Plan refers to Neighbourhood Commercial centres as being within residential neighbourhoods. Policy 2.2.2(a) permits retirement homes in Residential Areas and policy 2.6.2(g) encourages the supply and integration of seniors' housing throughout the City. Policy 4.6.2(b) states

that residential uses are permitted on the second and/or third storey of a retail/commercial building. It does not state that only retail/commercial buildings are permitted in Neighbourhood Commercial areas or that residential uses may only be located above retail/commercial buildings. It simply states that residential uses may be permitted in the second and/or third storey of retail/commercial buildings in Neighbourhood Commercial areas. The Tribunal finds that the subject property is located in a residential area where seniors' housing is permitted and encouraged. The modified proposed Zoning By-law Amendment provides for seniors' housing by means of a retirement home. It does not provide for a retail/commercial building with residential uses above. As a result, the Tribunal finds that policy 4.6.2(b) does not apply in the present case.

The City's 2020 Official Plan

[43] Under the City's 2020 Official Plan, the subject property is in a "Mixed Use Nodes and Intensification Corridor" area with the specific designation of "Local Centre". Policy 8.1.3(1) sets out the general objectives for Mixed Use Nodes and Intensification Corridors. These objectives include the need for the intensive integration of retail and service commercial with residential uses, the creation of complete communities, the use of compact built form close to transit, and compatibility with surrounding areas. Policy 8.1.3(1) states (emphasis added):

> 8.1.3(1) GENERAL OBJECTIVES
>
> a) To provide locations in the city that will serve as areas for more intensive integration of uses such as retail, service commercial, offices, institutional and entertainment uses with residential uses, public service facilities, cultural facilities, institutional uses and open space.
>
> b) To establish for each element of the Mixed Use Nodes and Intensification Corridors the appropriate range of uses, scales of development and levels of intensity.
>
> c) To provide amenities and services closer to where people live, with the objective of creating complete communities.

> d) To ensure Mixed Use Nodes and Intensification Corridors are developed in a compact built form, are pedestrian-oriented and highly accessible by public transit.
>
> e) To ensure the proper integration of Mixed Use Nodes and Intensification Corridors with surrounding Established Neighbourhoods Areas, protecting the physical character of these neighbourhoods.
>
> f) To ensure that development in Mixed Use Nodes and Intensification Corridors is compatible with the surrounding area.
>
> g) To promote an innovative and sustainable built environment that uses infrastructure and public service facilities efficiently and encourages a high quality of life.
>
> h) To encourage the accommodation of a diverse range of household sizes and incomes in Mixed Use Nodes and Intensification Corridors.
>
> i) To encourage the use of public transit, pedestrian and bicycle travel as an alternative to the automobile and to maximize personal safety.
>
> j) To direct the phasing and/or expansion of municipal infrastructure and services to ensure the timely and orderly development of Mixed Use Nodes and Intensification Corridors.
>
> k) To ensure that development of Mixed Use Nodes and Intensification Corridors is offset by a range of open space areas in a manner that is appropriate to the local context.

[44] The Tribunal finds that the proposed retirement home with retail and commercial uses on the ground floor provides for the integration of retail and service commercial uses with residential uses and, by providing housing close to services, helps to create a complete community. Based on its size and nature, the Tribunal finds that the proposed development constitutes compact built form. It is also located close to transit on Kerns Road. Policy 8.1.3(1)(f) includes the objective to ensure that development in Mixed Use Nodes and Intensification Corridors is compatible with the surrounding area. The City's 2020 Official Plan defines compatibility in policy 13. It states:

> Compatible or Compatibility – Development which may not necessarily be the same as or similar to existing or planned development in the vicinity, but nonetheless can co–exist without causing adverse impacts to the surrounding area.

[45] As determined above, the proposed development would not be the same as the existing surrounding buildings, but it can co-exist without causing adverse impacts to the area. Based on the definition in policy 13, the Tribunal finds that the modified proposed Zoning By-law Amendment would facilitate development that is compatible with the surrounding area.

[46] None of the Parties disputed that the proposed development would constitute special needs housing. Under the City's 2020 Official Plan, special needs housing is defined in policy 13 as:

> Special Needs Housing – Any housing, including dedicated facilities, in whole or in part, that is used by people who have specific needs beyond economic needs, and includes, but is not limited to, needs such as mobility requirements or support functions required for daily living. Examples may include, but are not limited to, housing for persons with disabilities such as physical, sensory or mental health disabilities, seniors' housing, group homes, emergency shelters, housing for the homeless, and independent permanent living arrangements, where support services such as meal preparation, grocery shopping, laundry, housekeeping, respite care and attendant services are provided. It does not include households that receive community–based support services in their own home.

[47] Policy 3.1.4 of the City's 2020 Official Plan specifically addresses assisted and special needs housing. Its objectives include the aim to permit special needs housing in residential areas throughout the urban areas of the City. Policy 3.1.4(1) states (emphasis added):

> 3.1.4 ASSISTED AND SPECIAL NEEDS HOUSING
>
> 3.1.4(1) OBJECTIVES
>
> a) <u>To meet housing needs by permitting assisted and special needs housing in all residential neighbourhoods in the Urban Area of the city</u>.
>
> b) To integrate assisted and special needs housing with market housing.
>
> c) To support housing programs that are beneficial to the provision of assisted and special needs housing.

[48] Specific policies addressing assisted and special needs housing are set out in policy 3.1.4(2). They again state that such housing shall be permitted throughout the residential areas in the City and assert that the City will recognize the importance of development applications providing for it. Policy 3.1.4(2)(a), (b), and (e) states (emphasis added):

> 3.1.4(2) POLICIES
>
> a) Assisted and special needs housing shall be permitted throughout the city, but are encouraged to locate within the Urban Area, where residential uses are permitted and where public transit, retail and public service facilities are readily accessible.
>
> b) The City will encourage providers of assisted and special needs housing in maintaining the supply of assisted and special needs housing in the Urban Area of the city. The Zoning By-law shall contain provisions that will permit assisted and special needs housing in all residential neighbourhoods, subject to reasonable planning standards and design criteria.
>
> […]
>
> (e) The City will recognize the importance of development applications which will provide assisted and special needs housing, and further, will give priority to planning approval of those receiving funding from senior levels of government or where proposed by a charitable not for profit organization. Any development application shall be assessed by the relevant policies of this Plan.
>
> […]

[49] The Tribunal finds that the subject property is located in an area where residential uses are permitted within the Urban Area of the City and, with bus service on Kerns Road and commercial and retail uses both on-site and in the vicinity of the subject property, public transit, retail, and public service facilities are readily accessible. As determined above, the Tribunal finds that the proposed development would be compatible with the surrounding area and is suitably designed. The Tribunal finds that the modified proposed Zoning By-law Amendment would facilitate development that conforms with these policies.

[50] The subject property is designated as Local Centre within the Mixed Use Nodes and Intensification Corridor area. The Urban Centre policies are found in policy 8.1.3(5)

of the City's 2020 Official Plan. The objectives of these policies, as set out in policy 8.1.3(5.1), emphasize the intent to provide for mixed use development including retail, service commercial, and residential uses. Policy 8.1.3(5.1) states:

> 8.1.3(5.1) OBJECTIVES
>
> a) To provide locations in the city for Local Centres that will serve as small areas of concentration for mixed use development in a compact built form, including pedestrian-oriented retail and service commercial uses, residential uses, office uses, public service facilities and open spaces.
>
> b) To provide opportunities for a limited range of small-scale retail and service commercial uses, and public service facilities in locations that meet residents' day-to-day and weekly goods and service needs.
>
> c) To protect the planned commercial function within Local Centres.
>
> d) To create vibrant and attractive places with increased day and night activity through the introduction of residential development and the integration of uses and open spaces.
>
> e) To achieve vertical integration of land uses, given the small size of Local Centre sites.

The proposed development would be a mixed-use development with residential, retail, and commercial uses. Through its inclusion of ground floor retail and commercial uses, it would provide opportunities to meet local needs, continue the planned commercial functions in the area, integrate residential uses, and achieve the vertical integration of land uses. The Tribunal finds that the modified proposed Zoning By-law Amendment would facilitate development that conforms with these objectives.

[51] Policy 8.1.3(5.2) sets out specific policies for Local Centre areas. It states that such areas are to provide a limited range of retail and service commercial uses that serve the day-to-day and weekly needs of residents within and in close proximity to the Local Centre and permit retail and service commercial uses on those lands. It states:

> 8.1.3(5.2) POLICIES
>
> a) Local Centre areas are intended to provide a limited range of retail and service commercial uses that serve the day-to-day and weekly needs of residents within and in close proximity to the Local Centre.

b) The following uses may be permitted on lands designated Local Centre:

   i) retail and service commercial uses;

   ii) residential dwelling units in the upper storeys of retail/commercial buildings; and

   iii) office uses in the upper storeys of retail/commercial buildings, and a limited amount of office uses at grade.

c) Local Centre areas are small-scale activity centres, generally ranging from one (1) to four (4) ha in size.

d) A maximum floor area ratio of development of 1.0:1 is an appropriate built form in Local Centre lands. An increase to this floor area ratio may occur through a site-specific Zoning By-law amendment or minor variance application, without the need for an amendment to this Plan, provided that the objectives of the Local Centre designation are maintained.

e) The City will encourage a minimum building height of two (2) storeys and the maximum building height shall not exceed four (4) storeys.

f) Any proposed development of sites designated Local Centre shall retain the planned commercial function of the site, in accordance with the objectives of Subsections 8.1.3(5.1) b) and c) of this Plan, to the satisfaction of the City.

g) The Zoning By-law shall establish a maximum floor area and a maximum floor area at grade per individual retail and service commercial unit, based on such considerations as planned commercial function, built form, and contribution to achieving vibrant, active and walkable built environments in Local Centres.

[52] With the integration of residential with small-scale retail and commercial uses, the Tribunal finds that the modified proposed Zoning By-law Amendment would facilitate development that conforms with these policies. The proposed development would be four storeys in height, close to transit, and continue the planned commercial function of the subject property. Policy 8.1.3(5.2)(b)(ii) addresses residential dwelling units in the upper storeys of retail/commercial buildings. This must be read together with policy 3.1.4(2)(a), which, as discussed above, states that assisted and special needs housing shall be permitted throughout the city and encourages such housing in urban residential areas where there is good access to transit, retail, and public service facilities, such as the area in which the subject property is located. Policy 3.1.4(2)(b) specifies that the

Zoning By-law shall contain provisions that will permit assisted and special needs housing in all residential neighbourhoods, subject to reasonable planning standards and design criteria. Based on these policies, the Tribunal finds that the proposed development is permitted in the Local Centre designated area.

PPS, Growth Plan and the Region's Official Plan

[53] Mr. Ramsay did not provide opinion evidence opposing the modified proposed Zoning By-law Amendment on the grounds of inconsistency with the PPS or non-conformity with the Growth Plan or the Region's Official Plan. Based on the uncontroverted opinion evidence of Mr. Wellings in these regards, and the positions of the City, Region, Halton Region Conservation Authority, Ms. Wice, and Ms. Silvera, the Tribunal finds that the modified proposed Zoning By-law Amendment is consistent with the PPS and conforms with the Growth Plan and the Region's Official Plan.

[54] The Tribunal notes that subsequent to the hearing, on December 6, 2023, Bill 150 - the *Official Plans Amendment Act*, *2023* - received royal assent. It made changes to the Region's Official Plan with retroactive effect, which apply in the Tribunal's decision-making regarding the appeal. In January 2024, the Tribunal reached out to the Parties to seek input on whether the passing of Bill 150 had any impacts on the potential outcome of this matter. All of the Parties have provided responses to state that Bill 150 does not impact the matter that was heard.

[55] Based on Mr. Wellings's opinion evidence, the Tribunal finds that the modified proposed Zoning By-law Amendment is consistent with the PPS and conforms with the Growth Plan, and the Region's Official Plan.

CONCLUSIONS

[56] Based on the evidence and submissions before it, the Tribunal finds that the modified proposed Zoning By-law Amendment is consistent with the PPS and conforms

with the Growth Plan, the Region's Official Plan, the City's 1997 Official Plan and the City's 2020 Official Plan. The Tribunal has had regard to the matters of provincial interest in s. 2 of the *Planning Act* as well as the information and materials that City Council received in relation to the matter. The Tribunal finds that the modified proposed Zoning By-law Amendment constitutes good planning.

[57] The Tribunal has determined that the modified proposed Zoning By-law Amendment conforms with both the City's 1997 Official Plan and its 2020 Official Plan. Based on the proposed settlement reached between the Appellant, the City, the Region, and the Halton Region Conservation Authority, these Parties have requested that the Tribunal withhold its final Order until the City's 2020 Official Plan has come into force and effect as it relates to the subject property. The Tribunal agrees to this request and issues the Interim Order below to this effect.

INTERIM ORDER

[58] **THE TRIBUNAL ORDERS** that the appeal filed by FGL Kerns Inc. is allowed in part, on an interim basis, contingent upon confirmation, satisfaction, or receipt of the pre-requisite matters identified in paragraph [59] below, and that the Zoning By-law Amendment, set out in Attachment 1 to this Interim Order and Decision, is approved in principle.

[59] The Tribunal withholds the issuance of its Final Order contingent upon:

a. the Tribunal having received and approved the Zoning By-law Amendment and its Schedule A, submitted in a final form, confirmed to be satisfactory to the Parties.

[60] **THE TRIBUNAL ORDERS** that its Final Order will be withheld pending notification by the City of Burlington and FGL Kerns Inc. that the City's 2020 Official Plan has come into force and effect as it relates to 1600 Kerns Road.

[61] This Member 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.

[62] If the Parties do not submit the final drafts of the Zoning By-law Amendment and its Schedule A, and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order have been satisfied, and do not request the issuance of the Final Order, by July 1, 2024, then the Parties 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 Schedule A and issuance of the Final Order by the Tribunal.

[63] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine additional timelines and deadlines for the submission of the final form of the Zoning By-law Amendment and Schedule A, the satisfaction of the contingent pre-requisites, and the issuance of the Final Order.

[64] The Tribunal's Decision in connection with this matter does not pre-determine whether any permit which may be required by the Halton Region Conservation Authority under the authority of the *Conservation Authorities Act*, R.S.O 1997, c. C27 can or should be issued by Halton Region Conservation Authority.

"Hugh S. Wilkins"

HUGH S. WILKINS
VICE-CHAIR

Attachment 1

ZONING BY-LAW

BY-LAW NUMBER 2020.461

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 2020.461

Being a By-law to amend By-law 2020, as amended for 1600 Kerns Road to facilitate the development of a 4-storey retirement home excluding roof-top mechanical.

File Nos. : 520-02/21

WHEREAS Section 34(1) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, states that Zoning By-laws may be passed by the councils of local municipalities; and,

WHEREAS the Ontario Land Tribunal issued a decision on XXX, 2023, to amend the City's existing Zoning By-law 2020, as amended, to permit a 4-storey retirement home excluding roof-top mechanical for land located at 1600 Kerns, Burlington.

THE COUNCIL OF THE CORPORATION OF THE CITY OF BURLINGTON HEREBY ENACTS AS FOLLOWS:

1. Zoning Map Number XX of PART 15 to By-law 2020, as amended, is hereby amended as shown on Schedule "A" attached to this By-law.

2. The lands designated on Schedule "A" attached hereto are hereby rezoned from CN2 (Neighbourhood Commercial) to CN2-526 (Neighbourhood Commercial Exception) and O2 (Open Space).

3. PART 14 of By-law 2020, as amended, Exceptions to Zone Classifications, is amended by adding a new Exception 526 with the following:

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Exception 526	Zone CN2	Amendment 2020.461	Enacted XXX
1. Additional Permitted Use:			Retirement Home with ground floor Retail, Service Commercial and Office Uses
2. Regulations for a Retirement Home			
a. Lot Area			0.5 ha
b. Yard abutting Four Seasons Drive			5 m
c. Yard abutting Kerns Road			4.5 m
d. Yard abutting a Residential Zone, inclusive of terraces and balconies: i. Lower Level ii. Floors 1 to 2 iii. Floor 3: iv. Floor 4: v. Mechanical Penthouse:			 7.5 m 7.5 m 12 m 16 m 24 m
e. Yard Abutting O2 Zone			0 m inclusive of terraces and balconies
f. Maximum Number of Retirement Units			115 units
g. Floor Area for Retail, Service Commercial and Office			450 m²
h. Maximum Floor Area for Retirement Home			9,779 m^2
i. Maximum Building Height			4-storeys up to 14m measured from fixed grade of Four Seasons Road excluding roof-top mechanical penthouse.
j. Parking: i. Retirement Home: 1. Occupant/Employee 2. Visitor and Maintenance ii. Retail and Service Commercial:			 0.5 parking spaces per unit Not required 4 parking spaces per 100 m² of gross floor area.
k. Above-Grade and Below-Grade Parking Structure i. Yard Abutting an O2 Zone:			 0 m

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ii. Yard Abutting Four Seasons Drive: iii. Yard Abutting Kerns Road: iv. Yard Abutting a Residential Zone:	2.7 m 4.5 m 12 m
l. Entrance and Exit Ramps from a street line	0 m
m. Landscape Buffer Abutting a Residential Zone i. Abutting the entrance and exit ramp to the parking structure and loading area ii. Abutting an outdoor Amenity Area	 2.3 m 3 m
n. Landscape Area: i. Abutting a street: ii. Abutting an O2 Zone:	 3 m, a transformer may encroach. 0 m
o. Every non-residential use shall provide a pedestrian accessible door on the building elevation facing Kerns Road or Four Seasons Drive.	
p. Amenity Area	15.4 m² per unit

ENACTED AND PASSED this _____day of _____, 2023

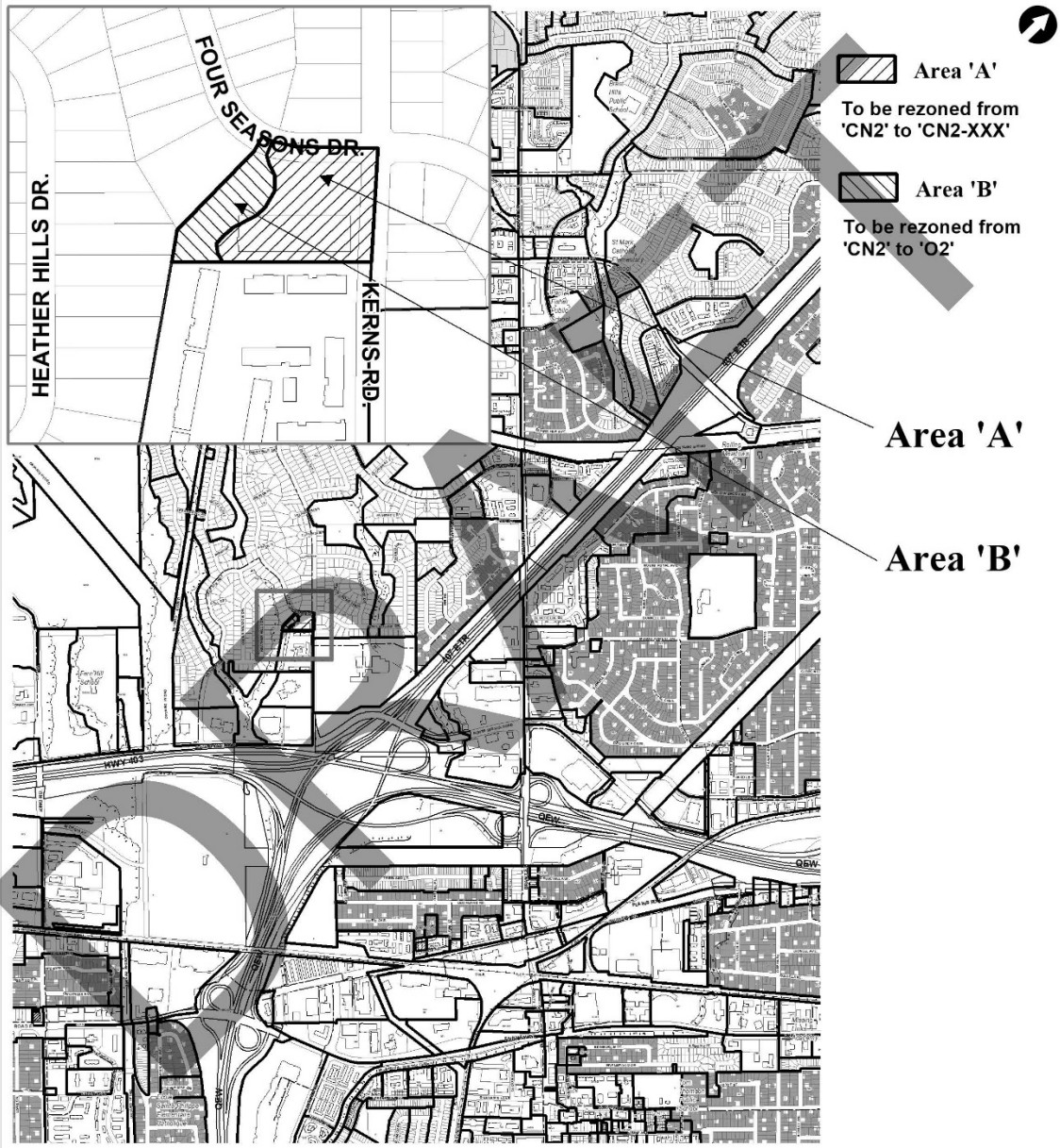
_____ MAYOR

_____ CITY CLERK

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ZONING
1600 Kerns Road **SCHEDULE "A"**

OLT Case No. OLT-22-004680
File No. 520-02/21
Exhibit No. _____



Area 'A'
To be rezoned from 'CN2' to 'CN2-XXX'

Area 'B'
To be rezoned from 'CN2' to 'O2'

SCHEDULE 'A' TO BY-LAW 2020.xxx AMENDING MAP NO. 11E PART 15, BY-LAW 2020 AS AMENDED.
PASSED THE xxth DAY OF xxxx, 2023

MAYOR CITY CLERK

TERANET City of Burlington
Community Planning Department