

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



ISSUE DATE: March 25, 2019

CASE NO(S): PL160830

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 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	1353837 Ontario Inc. and Lawrence Ryan
Subject:	Proposed Official Plan Amendment No. 21
Municipality:	City of Stratford
OMB Case No.:	PL160830
OMB File No.:	PL160830
OMB Case Name:	1353837 Ontario Inc. v. Stratford

Heard: January 28 -31, 2019 in Stratford, Ontario

APPEARANCES:

Parties

Counsel

City of Stratford (“City”)

C. Williams/D. Neligan

Ministry of Municipal Affairs and
Housing (“MMAH”)

J. Page/J. Evola (Student at law)

1353837 Ontario Inc. and Lawrence
Ryan (“Appellants”)

J. Doherty/J. Minnes/ T. Neill (Student at law)

**DECISION DELIVERED BY BLAIR S. TAYLOR AND ORDER OF THE
TRIBUNAL**

INTRODUCTION

[1] This appeal is but one of over 20 pieces of litigation between the Appellants and the City.

BACKGROUND AND CONTEXT

[2] The City in 2011 commenced its land use planning process to update its 1993 Official Plan. To that end Official Plan Amendment No. 19 (“OPA 19”) was adopted by City Council.

[3] Subsequently the City annexed certain additional lands which required agricultural policies to be included in the City’s Official Plan. Consequently the City repealed OPA 19 and adopted Official Plan Amendment No. 21 (“OPA 21”).

[4] OPA 21 was adopted on December 14, 2015 and the MMAH approved OPA 21 on July 21, 2016.

[5] The Appellants were the only parties to appeal OPA 21.

THE HEARING FOCUS

[6] The focus of the hearing was with regard to section 4.11 of OPA 21. As will be set out in greater detail below, in the lead up to the hearing, the City proposed certain modifications to OPA 21 as set out in the witness statement of its land use planner which were later further modified as in Exhibit 20.

DECISION

[7] The Tribunal has considered the evidence of the witnesses, the evidence of the participants, and the submissions of counsel. The Tribunal has had regard for the matters of Provincial Interest as set out in section 2 of the *Planning Act* (“PA”) and for

the decision of the approval authority and the information it had in making its decision, has found that OPA 21 with the modifications in Exhibit 20 is consistent with the Provincial Policy Statement 2014 (“PPS”), constitutes good planning, and is in the public interest.

[8] Accordingly the Tribunal finds that it will allow the appeal in part, approve OPA 21 as modified by Exhibit 20 and otherwise the appeals of the Appellants are wholly dismissed.

THE SUBJECT LANDS

[9] At issue in this appeal are the lands known municipally as 105 St. Patrick’s Street/350 Downie Street and have been known locally as “the Cooper site”, or “the CNR site”, but for the purposes of this hearing will be referred to as “the Subject Lands”.

BRIEF CHRONOLOGY

[10] In brief form the Tribunal will outline a number of events leading up to this hearing:

- January 1993 the City adopted its Official Plan.
- November 1994 the MMAH approved it with a 2013 planning horizon.
- June 5, 2009 the Subject Lands were expropriated from the Appellants by the City.
- May 27, 2014 OPA 19 was adopted (no agricultural policies).
- January 1, 2015 the City annexed certain agricultural lands.
- September 28, 2015 there was a statutory public meeting to repeal OPA 19.

- November 23, 2015 is the date of the Planning Staff report for the OPA 21.
- December 14, 2015 City Council adopted OPA 21.
- June 24, 2016 the Appellants objected to OPA 21 to the MMAH.
- June 29, 2016 MMAH staff recommended approval of OPA 21 as modified.
- July 21, 2016 OPA21 was approved by the MMAH.
- August 10, 2016 the Appellants appealed all of OPA 21.
- February 2, 2017 the Appellants' appeals were restricted to a site specific appeal of OPA 21 for the Subject Lands.
- November 17, 2017 the Ontario Municipal Board dismissed the City's Motion to Dismiss the appeal by the Appellants against OPA 21.
- April 24, 2018 the Ontario Municipal Board issued its Procedural Order and Issues List including issues concerning the following provisions of OPA 21: subsection 2.3(1); subsection 2.3(viii); subsection 3.5.1; subsection 3.5.3; subsection 3.5.4; subsection 3.5.7(ii); subsection 3.5.7(viii); subsection 3.5.8; subsection 3.6.3; subsection 3.6.4; subsection 4.4.6; subsection 4.4.10; subsection 4.7.2; subsection 4.7.8; subsection 4.9; subsection 5.5; subsection 6.6.3; subsection 8.4(ii) and subsection 8.4(vii).
- November 16, 2018 a "without prejudice" offer to settle was forwarded to the Appellants' counsel from the City's counsel.
- November 26, 2018 the "without prejudice" offer was made a "with prejudice" offer by the City.

- November 30, 2018 the witness statement by David Cuming (Appellants' witness) was filed.
- December 21, 2018, the witness statements of Melanie Hare and Chris Borgal were filed, based on the settlement offer.
- December 21, 2018 a letter from City's counsel confirmed that the City will be proceeding to the hearing on the basis of the with prejudice settlement offer.
- January 11, 2019 the Reply Witness Statement by David Cuming was filed.
- January 14, 2019 the Reply Witness Statement by Lawrence Ryan was filed indicating he was not aware of the settlement offer until December 21, 2018.

STATUTORY PROVISIONS

[11] Section 26 of the PA requires a municipality to revise its official plan to conform with provincial plans, have regard to matters of provincial interest as set out in section 2 of the PA and to be consistent with policy statements. In this case the approval authority is the MMAH.

[12] Section 1 sets out the purposes of the PA which are:

- (a) to promote the sustainable economic development and healthy natural environment within the policy and by the means provided under this Act;
- (b) to provide for a land use planning system led by provincial policy;
- (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
- (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
- (e) to encourage the cooperation and coordination among various interests; and
- (f) to recognize the decision-making authority and accountability of municipal councils in planning.

[13] The matters of provincial interest set out in section 2 include:

- (d) the conservation of features of significant architectural, cultural, historical, archeological or scientific interest;
- (h) the orderly development of safe and healthy communities;
- (n) the resolution of planning conflicts involving public and private interests; and
- (p) the appropriate location of growth and development.

[14] Section 2.1(1) of the PA states that:

When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to, (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and (b) any information and material that the municipal council or approval authority considered in making the decision described in clause (a).

[15] Further section 3(5) of the PA states:

A decision of the council of a municipality, local board, planning board, a minister of the Crown and a ministry, board, commission or agency of the government including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision ...

[16] Finally with regard to the PA, the Tribunal would reference section 17(50) which states the following:

On an appeal or a transfer, the Municipal Board may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse all or part of the plan. (Emphasis added)

PPS

[17] Of specific relevance in this hearing are the following provisions from the PPS. First from Part 3 –“How to Read the PPS”:

The provincial policy-led planning system recognizes and addresses the complex interrelationships among environmental, economic and social

factors in land use planning. The Provincial Policy Statement supports a comprehensive, integrated and long-time approach to planning, and recognizes linkages among policy areas.

[18] Also from Part 3 is the section entitled “Read the Entire Provincial Policy Statement”:

The Provincial Policy Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation. When more than one policy is relevant, a decision maker should consider all of the relevant policies to understand how they work together. The language of each policy, including the implementation and interpretation policies, will assist decision-makers in understanding how the policies are to be implemented.

[19] Section 2.6 is entitled Cultural Heritage and Archaeology and policy 2.6.1 states:

Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

[20] Section 2.6.3 states:

Planning authorities shall not permit development and site alterations on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been determined that the heritage attributes of the protected heritage property will be conserved.

[21] Section 4.7 of the Implementation and Interpretation section states in part:

The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

[22] Also relevant from the PPS are the following definitions:

Built Heritage Resource: means a building, structure, monument, installation or any manufactured remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Aboriginal community. Built Heritage Resources are generally located on property that has been designated under Parts IV and V of the *Ontario Heritage Act*, or included on local, provincial and/or federal registers.

Conserved: means the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or

interest is retained under the *Ontario Heritage Act*. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments.

Cultural Heritage Landscapes: means a defined geographic area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Examples may include but are not limited to, heritage conservation districts designated under the *Ontario Heritage Act*; villages, parks, gardens, battlefields, main streets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance; and areas recognized by federal or international designation authorities (e.g. a National, Historic Site or District designation, or a UNESCO World Heritage Site).

Significant: means ... (e) in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event or a people.

JURISPRUDENCE

[23] In the determination of this matter the Tribunal has taken guidance from the following cases.

[24] In the *City of Toronto v. Goldless Properties Inc.* 67 O.R. (3rd Edition 3D) pg. 441, the Court of Appeal said at paragraph 49:

In this regard it is important to bear in mind that the purpose of an official plan is to set out a framework of: “goals, objectives and policies” to shape and discipline specific operative planning decisions. An official plan rises above the level of detailed regulation and establishes the broad principles that are to govern the municipality’s land use planning generally. As explained by Saunders, J. in [pg. 458] *Bele Himmel Investments Ltd. v. City of Mississauga* [1982] O.J. #1200 (QL), 13 O.M.B.R. 17 (HJC) at paragraph 22, pg. 27 O.M.B.R. :

“Official plans are not set statutes and should not be construed as such in growing municipalities such as Mississauga, official plans set out the present policy of the community concerning its future physical, social and economic development.”

In our view, it is essential to bear in mind the legislative purpose when interpreting scope of authority to adopt an official plan. The permissible scope for an official plan must be sufficient to embrace all matters that the legislature deems relevant for planning purposes.

[25] In *Cloverdale Shopping Centre Ltd. et al v. Township of Etobicoke, et al* [1966] 2 O.R. pg. 439 (“*Cloverdale*”) the Court said:

The Minister or the Board is not deciding a lis in the sense that the issue is confined to those for or against the proposal but he or it has to consider the safety, welfare and conveniences i.e. the interest, of the public in the municipalities affected. In doing so the Minister or equally the Board is required to “act judicially” but not beyond the sense that the parties are to be accorded a full and fair hearing and their submissions considered. When this has been accorded to the parties, the decision – an administrative decision – has then to be made. The decision is not a decision upon the objections to the proposal; those objections may be and frequently are, of validity and importance; they may however, be overruled upon the larger considerations of administrative policy.

[26] And finally from the *City of Toronto v. Avenue Road Eglinton Community Association, 2019 ONSC 146* the Tribunal notes that Divisional Court said at paragraph 51:

The City’s and the Ministry’s position that the Board’s decision is unreasonable because it ignores the framework that the Legislature adopted for the implementation of the development permit system ignored several key facts about that framework. First, the Act provides for a right of appeal to the Board from the passage of an official plan amendment. To adjudicate official plan amendment appeals, the Board is required to balance a variety of different stakeholder interests and produce a result that is consistent with the Provincial Policy Statement, conforms to any applicable provincial plan, and represents good planning. The Board is not simply adjudicating on a lis between two parties. To properly perform its function, the Board requires broad procedural discretion to scope and shape the hearing of appeals before it.

THE HEARING

[27] Testifying on behalf of the Appellants were the following: Robert Shipley, qualified as a land use planner with expertise in heritage; David Cuming, land use and cultural heritage resource planner; and one of the Appellants Lawrence Ryan.

[28] The Tribunal also heard from participants Dean Robinson, Roger Hilderly and Lesley Walker-Fitzpatrick.

[29] On behalf of the City, the Tribunal heard from land use planner Melanie Hare and

Chris Brogal qualified as an expert in heritage planning and conservation.

[30] There is one area of agreement between the parties and the participants and that is as it relates to the importance of the Subject Lands.

[31] The uncontradicted evidence is that the Subject Lands were formerly used as the railway repair shop of the Grand Trunk Railway. The Grand Trunk repair building is about 160,000 square feet in size, was sufficiently robust in construction to enable diesel locomotives to be hoisted into the air by crane to enable repair work to be done to the undercarriage of the diesel locomotives.

[32] There is no disagreement among the experts and the participants that the Subject Lands are of local, provincial, national and perhaps even international heritage significance. It is agreed that the Subject Lands are not designated under the *Ontario Heritage Act*.

[33] It is also agreed that there is no *Ontario Heritage Act* matter before the Tribunal but that the Tribunal is only dealing with the OPA 21 under the PA.

[34] Notwithstanding the fact that the without prejudice offer by the City was sent to the Appellants' counsel on November 16, 2018 (two weeks prior to the date for witness statements by the Appellants), it is clear Mr. Cuming was not aware of the offer to settle until he saw the witness statement of Melanie Hare as of December 21, 2018. Similarly Lawrence Ryan in his Reply Witness Statement states that he was not aware of the Offer to Settle until he had seen the December 21, 2018 witness statement.

[35] To the Tribunal that gap in knowledge is a matter external to the consideration of this appeal. Suffice it to say that the with prejudice offer to settle by the City was an attempt to address a number of the Appellants' issues through proposed modifications to OPA 21.

[36] Notwithstanding those modifications, Mr. Cuming remained of the view that the

settlement provisions originally found in Exhibit 16 and as refined in Exhibit 20 were not in any measurable way an improvement on the original OPA 21 Section 4.11 policies.

[37] He testified that there was no evidence that the Exhibit 16 policies were subject to any review or consultation or that they were processed through any PA requirements for public meetings; that the proposed new section 4.11.2 under-estimated the quantity, quality and significance of the built heritage resources and that they were an inadequate response to any meaningful conservation.

[38] Curiously the Reply Witness Statement of Lawrence Ryan (Exhibit 10 at Paragraph 22 and 23) states:

- 22 135 [1353837 Ontario Inc.] was first made aware of the proposed section 4.11 when the City provided their Responding Witness Statements on December 21, 2018.
- 23 The proposed section 4.11 proposed by the City confirms 135 partial success in this appeal...

He too however complains that the City did not undergo a public process nor did it consult with the public in any meaningful way with regard to the proposed modifications.

[39] The original version of section 4.11 is found in OPA 21 at Exhibit 2, Tab 36, Page 805. There section 4.11 is referenced as being the Cooper Site – Major Institutional Use Focus Area. Section 4.11.2 under Permitted Uses provides for largely Public Institution or Public Service Facility Use. Section 4.11.3 notes that the City is in the process of determining the future of the existing structure on the Cooper site which may include demolition, partial preservation, rehabilitation and/or commemoration. And section 4.11.4 provides that the City will go through a master plan process for the development of the lands on the Cooper site.

[40] Exhibit 16 contains a track changes version of the proposed modifications to section 4.11, and as proposed by the City whereby the following changes are made:

- a. The name of the area is changed to the Grand Trunk Anchor District;

- b. Reference is made to the Young Men's Christian Association and the University of Waterloo activities on the Subject Lands;
- c. That the Subject Lands will be subject to the policies of the Downtown Core designation in the Official Plan. (All of the other permitted uses proposed in section 4.11.2 are deleted.)
- d. Section 4.11.2 is significantly reworked to note that the Subject Lands contain a significant built heritage resource, that the City is in the process of determining the future of the Grand Trunk building, the options include ... "rehabilitation, adaptive – reuse, partial preservation, conservation, commemoration and/or demolition in whole or in part. Given the significance of the built heritage resource a heritage impact assessment shall be submitted for any development or permit application in the Grand Trunk Anchor District."

[41] The proposed section 4.11 carries on to deal with parking in the downtown area, the Master Plan Process, and Bonus Eligibility for Height and/or Density for a number of factors and makes some modest alterations in terms of mapping to ensure the entire Subject Lands were mapped as Downtown Core Area.

PARTICIPANTS

[42] The Tribunal heard from three participants whose interest in this matter the Tribunal finds to be separate and distinct from that of the Appellants.

[43] The Tribunal is of the view that the participants' angst stems from the original wording of OPA 21 in section 4.11.3 under the heading Commemoration/Preservation where the policy states that the City is in the process of determining the future of the existing structure on the Cooper site which may include "demolition", partial preservation, rehabilitation and/or commemoration.

[44] From the evidence the Tribunal heard, it seemed clear that the phraseology used in section 4.11.3 which lists “demolition” as the first option caused significant mistrust between elements of the public and City Council due to the fact that the Subject Lands had been recommended to be designated under the *Ontario Heritage Act* to City Council but City Council had declined to do that. Thus with demolition as being the first option in section 4.11.3, it may have served to heighten the concerns of the participants that the structure would be totally demolished.

[45] The revised wording in Exhibit 20 under section 4.1.1(iii) provides: to ensure that the historic use of the Grand Trunk Anchor District is commemorated and the Grand Trunk building is conserved with an emphasis on the importance of rail to the development of the City. This proposed modification did provide some degree of comfort to the participants, however the wording of as found in section 4.11.2 in the listing of options which was revised to read rehabilitation, adaptive – reuse, partial preservation, conservation, commemoration and/or demolition in whole or in part, still raised concerns with the participants due to the retention of the word “demolition”.

APPELLANTS’ CASE

[46] It was Mr. Cuming’s opinion section 4.11 as found in Exhibit 20 was not an improvement on the proposed section 4.11 policies as found in the original OPA 21 and it was his opinion OPA 21 section 4.11 policies should be deleted in their entirety.

[47] He was of the view that the Subject Lands were better protected under the Heritage Conservation provisions of OPA 21 in section 3.5.1 under Purpose where it states: “... the City recognizes the significance of these resources and will provide for their conservation, including adaptive reuse, in accordance with the provisions of the *Ontario Heritage Act*, the *Cemeteries Act*, and the *Planning Act* and other relevant legislation.”

[48] Further he took the Tribunal to a number of policies in section 3.5.7 Implementation: (ii) City Resources where it states:

The City shall protect and maintain all City owned heritage resources to the highest standard to set a model for heritage conservation, while providing for adaptive reuse.

To (iii) Regulatory and Other Legislative Tools:

(a) the City shall use available regulatory and other legislative tools to protect heritage resources including the power to stop demolition and alteration of designated properties under the *Ontario Heritage Act* ...

To (iv) Heritage Easements:

The City may acquire heritage easements and enter into development agreements as appropriate for the protection of heritage resources and landscapes.

To (viii) Adjacent lands:

Development and site alteration on lands adjacent to designated heritage properties or heritage conservation districts shall not be permitted except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved. The City shall require submission of a heritage impact assessment prepared by a qualified professional to address this requirement.

And finally to section 3.5.8 Infilling in Heritage Areas where it states:

That in the Heritage Areas and the Heritage Corridors as shown on Schedule E, the City will ensure that, where infilling is proposed or municipal services are being installed or upgraded, the inherent heritage qualities of the area or corridor will be retained, restored and ideally enhanced unless overriding conditions of public health and safety warrant otherwise.

[49] It was Mr. Cuming's opinion that the inclusion of the word "demolition" in section 4.11.2 of Exhibit 20 was the antithesis of what was intended in section 2.6.1 of the PPS where significant built heritage resources and significant cultural heritage landscapes shall be conserved.

[50] It was his opinion that the heritage provisions as found in Exhibit 20 were not consistent with the PPS and that the Subject Lands would be better off with the existing

heritage provisions in OPA 21.

[51] The final witness for the Appellants was Lawrence Ryan who testified that he wanted to see changes to the land use schedules for OPA 21 which would include depicting the so-called “undisputed lands” and the “disputed lands” between he and the City.

[52] The Tribunal also heard that Mr. Ryan’s primary concern was that the City had created an official plan amendment that set the Subject Lands up to be sold.

[53] His evidence was that section 4.11 of OPA 21 prejudiced his company and that the Tribunal should note that the City is trying to do indirectly what they cannot do directly and that the Tribunal should either delete section 4.11 in its entirety or ensure that the policy protects his rights under section 2(n) of the PA which references the resolution of planning conflicts involving public and private interests as a matter of provincial interest.

CITY’S CASE

[54] The Tribunal heard from land use planner Melanie Hare with regard to her involvement in this matter. She indicated that Appendix C to her witness statement of December 21, 2018 contained the original set of proposed modifications to OPA 21, which was an attempt by the City to address the concerns of the Appellants as they related to the wording of section 4.11.

[55] In response to the evidence of the Appellants, she had done further revisions to Exhibit 16 and produced Exhibit 20 which is a track change version of modified Ex.16, to address concerns of the Appellants in their evidence in chief.

[56] She testified that if the Tribunal were not approve section 4.11, then there would be no site specific policy direction with regard to the Grand Trunk Anchor District, no recognition of the City’s intent with regard to the Grand Trunk building, no intent with

regard to parking on the Subject Lands, and no intent with regard to the master plan process.

[57] In her view, OPA 21 with the proposed modifications as found in Exhibit 20, was consistent with the PPS as being a growth area pursuant to section 1.1.3.1 where the focus of growth was in a settlement area and to promote redevelopment including brownfield sites which the Subject Lands are. Further, it was her opinion that OPA 21 was consistent with the long-term economic prosperity set out in section 1.7.1 of the PPS especially with regard to: (a) promoting opportunities for economic development and community investment readiness; (b) optimizing the long-term availability and use of land resources, infrastructure; (c) maintaining and where possible enhancing the vitality and viability of downtowns and main streets; (d) encouraging a sense of place by promoting well-designed built form and cultural planning and by conserving features that helped to define character, including built heritage resources and cultural landscapes; and (e) promoting the redevelopment of brownfield sites.

[58] She agreed that section 2.6.1 references that significant built heritage resources and significant cultural heritage landscapes shall be conserved but noted the definition of conserved does not preclude demolition and that the Subject Lands had not been designated under the *Ontario Heritage Act*.

[59] She agreed that section 4.7 of the PPS states that the official plan is the most important vehicle for the implementation of the PPS and submitted that this has been done through section 4.11 as found in Exhibit 20 where a range of options are set out firstly for rehabilitation, adaptive reuse, partial preservation, conservation, commemoration and/or demolition in whole or in part and that the master plan which has now been completed (Exhibit 1, Tab 30) specifically references the adaptive reuse of the Grand Trunk building.

[60] She disagreed with Mr. Cuming's evidence as it related to the deletion of section 4.11 as being inconsistent with the PPS.

[61] Further she indicated that while Mr. Cuming sought to rely on other policies of OPA 21, while those policies were in force and of effect for all of the other lands in the City of Stratford, that the entire OPA 21 had been appealed by the Appellants and if OPA 21 were not approved by the Tribunal, the fallback position for the Subject Lands would be the 1993 Official Plan which precedes both the PPS of 2005 and the PPS of 2014.

[62] In cross-examination Ms. Hare was asked if the definition of conserved in the PPS did not include any mention of demolition to which she responded that she agreed, but that the definition of conserved does not include any mention of adaptive reuse or any of the other options that are available. She was asked if demolition was the antithesis of conserved to which she disagreed testifying that demolition may not be a preferred alternative but it is not precluded from the definition of conserved.

[63] The Tribunal heard from Chris Borgal whose knowledge of the Subject Lands dates from 2010 when the City retained him to examine the Subject Lands and he provided an independent review at that time. Subsequently in preparation for this hearing he was retained again due to his familiarity with the area and with the Subject Lands and the Grand Trunk building.

[64] Addressing the issue of demolition he noted that the definition of conserved in the PPS does not include demolition but that it also did not use the word preservation. Thus he was of the view that it entailed a wide range of options.

[65] He testified that for example with regard to the current refurbishment of Massey Hall in Toronto, that it was necessary to remove part of the building to allow for a larger back of house for the auditorium.

[66] With regard to the Subject Lands, the concept of a full and complete demolition of the Subject Lands is not supported by him but that some demolition of part of the building might be necessary for the viable adaptive reuse of the Subject Lands.

MMAH'S CASE

[67] Finally the Tribunal heard from Eric Boyd, the Acting Manager of Community Planning for the Ministry of Municipal Affairs and Housing. Mr. Boyd described the “one window” process in the provincial government with regard to OPA 19 and 21 and that his Ministry was the lead and had circulated the OPAs to the other ministries to provide comments from their areas of expertise and that the Ministry makes the decision. He indicated that the Ministry of Tourism, Culture and Sport (which ministry has responsibility for heritage matters) had been circulated and it had no comments with regard specifically to section 4.11 of OPA 19 and OPA 21.

[68] He confirmed that the Ministry had received submissions from members of the public and that the Appellants had also written making submissions again as to the Appellants' particular interest in the Subject Lands. He stated that the Ministry had approved the OPA 21, that he had first seen the proposed modifications in the witness statement of Ms. Hare on December 21, 2018 and that he had had no significant concerns with them but he contacted the Ministry of Tourism, Culture and Sport and circulated the email to them and followed up with a phone call to the manager and the heritage planner to see if there were any concerns or revisions needed and that there were no significant concerns or comments.

[69] He concurred with the land use planning opinion of Ms. Hare.

[70] His opinion was that OPA 21 implemented the policy direction in the PPS and that it was consistent with the PPS. He stated that it was not uncommon for there to be special sites mentioned in the official plan of a municipality. In this case there was a large significant built heritage structure and that it was good planning to have a special policy for such a building and lands as it would provide the basis for the municipality to do more planning work i.e. through a master plan, that it would acknowledge and recognize the comments that had come in from the public with regard to the Subject Lands and that the PA in section 24 requires that public works be done in accordance with the official plan. Therefore he was supportive of Exhibit 20 that it took into account

the provincial interest laid in section 2 of the PA, it was consistent with the PPS, and represented good planning.

FINDINGS

[71] The purpose of an official plan is to shape broad principles to govern the municipality's land use planning.

[72] On an appeal of an official plan, the courts have said since *Cloverdale* in 1966 and as recently as *Avenue Road Eglinton Community Association* in 2019, that the Tribunal is not acting like a court and deciding a *lis* between the parties. While the Tribunal has to act "judicially" in terms of a fair and transparent hearing, once that has been accorded to the parties, the Tribunal then makes an administrative decision that considers matters of provincial interest, consistency with the PPS, conformity with any provincial plans, good planning and the public interest.

[73] On an appeal of an official plan, section 17(50) of the PA enables the Tribunal to make modifications to all or part of the official plan that has already gone through the PA process with public and statutory meetings where the public is consulted.

[74] In this case, the Tribunal prefers the evidence of Ms. Hare, Mr. Boyd and Mr. Borgal.

[75] The Tribunal does not agree with the opinion of Mr. Cuming that if the Tribunal were to allow the Appellants' appeal that the Subject Lands would be protected by other provisions in OPA 21. Had the Appellants narrowed the appeal to just section 4.11 that might have been the case, but that was never done, as evidenced by the Issues List in the Procedural Order issued by the Tribunal.

[76] The Tribunal finds that the interests of the Appellants are separate from the interests of the participants.

[77] The Tribunal finds that the participants' interests seek to have the Grand Trunk building preserved in toto, and the mere reference to "demolition" strikes fear and consternation in the hearts of the participants.

[78] Some comfort was taken by the participants in the master planning exercise which has been completed and seeks the adaptive reuse of the Grand Trunk building but participant concerns remain when OPA 21 as found in Exhibit 20 still includes reference to "demolition".

[79] The Tribunal construes the interests of the Appellants to be self-interest and not public interest as evidenced by Mr. Ryan's desire that the land use schedules of OPA 21 should depict the "disputed lands" and the "undisputed lands", in reference to his other on-going litigation with the City.

[80] The Tribunal in considering this matter notes the following circumstances: the Subject Lands are located in the heart of the City's downtown, are adjacent to a heritage district, the Subject Lands contain a building integral to the City's history and agreed by all to be a significant built heritage resource, but located in a brownfield area.

[81] In such circumstances, the Tribunal finds that the City ought to have as wide a range of options available to it so as to enable the possible adaptive reuse of the Grand Trunk building and the Subject Lands being reclaimed from a brownfield site, due to their prominent location within the downtown area of the City.

[82] The Tribunal does not agree that demolition is the antithesis of conserved as set out in the definition in the PPS. As Mr. Borgal explained sometimes some demolition may be necessary to effect the adaptive reuse of a significant built heritage resource.

[83] While that may cause angst for the participants, the Tribunal finds that it would not be appropriate to tie the hands of the City with regard to a very important public asset in the downtown of the City.

[84] Thus the Tribunal will allow the appeal in part, will approve OPA 21 as modified for section 4.11 as found in Exhibit 20 and otherwise wholly dismisses the appeals of the Appellants.

[85] This is the Order of the Tribunal.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248