

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 04, 2023

CASE NO(S): OLT-22-002219
(Formerly PL210040)
OLT-22-002483
(Formerly PL200150)

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

Appellant: 1085 Clearview Limited Partnership
Appellant: 1246235 Ontario Inc.
Appellant: 1602211 Ontario Ltd.
Appellant: 2084 Lakeshore Holdings Ltd. et al.; and
others
Description: Proposed Official Plan Amendment for
Burlington New Official Plan
Municipality: City of Burlington
OLT Case No.: OLT-22-002219
Legacy Case No.: PL210040
OLT Lead Case No.: OLT-22-002219
Legacy Lead Case No.: PL210040
OLT Case Name: 1085 Clearview Limited Partnership v. Halton
(Reg. Mun.)

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sofina Foods Inc.
Appellant: Walmart Canada Corp.
Appellant: Reserve Properties Ltd.
Appellant: Vrancorp Group; and others
Description: Proposed Official Plan Amendment No. 119
Municipality: City of Burlington
OLT Case No.: OLT-22-002483
Legacy Case No.: PL200150
OLT Lead Case No.: OLT-22-002483

Legacy Lead Case No.: PL200150
 OLT Case Name: Sofina Foods Inc. v. Burlington (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Walmart Canada Corp.
 Appellant: Burlington Healthcare Centre Inc.
 Appellant: Better Life Development
 Appellant: Emshih Developments Inc.; and others
 Description: By-law No. 2020.418
 Municipality: City of Burlington
 OLT Case No.: OLT-22-002484
 Legacy Case No.: PL200151
 OLT Lead Case No.: OLT-22-002483
 Legacy Lead Case No.: PL200150

Heard: October 28, 2022 by Video Hearing

APPEARANCES:

Parties

Regional Municipality of Halton
 (“Region”)

City of Burlington (“City”)

Appellants and Parties listed in
 Schedule 1

Counsel

K. Yerxa

A. Biggart and B. Hurley

DECISION DELIVERED BY D. CHIPMAN AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision arises from a motion brought by the City of Burlington (“City”) seeking partial approval to bring into effect those portions of the Official Plan (“OP”) not subject to site-specific appeals.

THE MOTION IS FOR AN ORDER:

- (a) Confirming which policies of the City's Official Plan are currently broadly appealed (i.e., not site-specific), as identified in Exhibit "B" to the Affidavit of Alison Enns, sworn on October 12, 2022;
- (b) Confirming which policies of the City's Official Plan are in force and effect by operation of the *Planning Act*, R.S.O. 1990, c.P.13, as amended ("*Planning Act*"), as identified in Exhibit "C" to the Affidavit of Alison Enns, sworn on October 12, 2022;
- (c) Confirming which policies of the City's Official Plan are in force and effect by operation of the *Planning Act*, as identified in Exhibit "C" to the Affidavit of Alison Enns, sworn October 12, 2022, due to the fact that no appeal was filed in relation to the identified policies;
- (d) Confirming that no portion of City's Official Plan, except for policies identified in Exhibit "C" of Alison Enns' Affidavit as "*Planning Act* Protection—in full effect", is in force or effect upon the sites identified in Exhibit "D" to the Affidavit of Alison Enns, sworn October 12, 2022; and,
- (e) Such further and other relief as requested by the City and as the Tribunal may permit.

MOTION MATERIALS

[2] The materials before the Tribunal on the Motion included:

1. Motion Record of the City dated October 12, 2021, containing the Affidavit of Alison Enns, Manager of Policy and Community, sworn October 12, 2022.

2. Reply to the Motion by the Respondent, containing the Affidavit of Brian Zeman sworn October 21, 2022.

City of Burlington (“City”)

[3] Counsel for the City provided the Tribunal with an overview of the history of the new OP of which the Region approved on November 30, 2020. Based on the Affidavit of Alison Enns, sworn October 12, 2022, including Exhibits B, C & D, the City requested that the Motion be granted.

[4] At the Case Management Conference (“CMC”) of May 9, 2022, the City advised the Tribunal that it wished to proceed with a partial approval of the new OP. The City’s desire to have portions of the new OP recognised as being in full force and effect was not opposed by the Parties in attendance.

[5] The Tribunal heard that the City has reviewed each appeal filed and prepared a Master Issues List for the purpose of, among other matters, determining which sections of the OP remains broadly appealed.

[6] The Tribunal was provided with the annotated version of the new OP, Exhibit B, which identified the OP policies that are not under appeal on a broad basis, either due to certain provisions of the *Planning Act* which limit appeal rights, or because they have been appealed on a site-specific basis only, or not at all.

[7] The Tribunal was brought to Exhibit C which provides a table summarizing those portions of the new OP that are not broadly appealed. The table clarifies where the *Planning Act* limits appeal rights to certain policies and also indicates which policies have been appealed on a site-specific basis only, where there are no overlapping broad appeals or none at all.

[8] Exhibit D contained a table which reflects appeal numbers and the corresponding addresses of the appellants with site-specific appeals.

[9] It was reiterated to the Tribunal that in order to maintain the rights of each site-specific appellant to pursue its appeal on a site-specific basis, the City is not seeking approval of any portion of the OP, at this time, on the sites as identified in Exhibit D.

[10] Counsel indicated a copy of the draft form of the Exhibits, were provided to each Appellant by email on September 9, 2022, for comments. Mr. Kemerer's email was returned undelivered. Mr. Biggart resent the email on September 21, 2022, requesting a response by Mr. Kemerer by October 10, 2022.

[11] Having received no response, the Motion Record was filed. The Response to the Motion, was filed by Mr. Kemerer on October 21, 2022, requesting the City's Motion be dismissed.

[12] The Tribunal heard that the Appellant had simply not done their homework in reviewing the materials provided through the email, namely Exhibits B, C & D, to ensure the accuracy of their appeal and had failed to provide comments.

[13] Mr. Biggart informed the Tribunal that the noted sections highlighted in the Response to the Motion, namely, s. 9.1.2(g) and (h), are appeals either protected under the *Planning Act* or in the case of Schedules 0-2 and 1-3 are partially appealed of which Mr. Kemerer's client is protected.

Nelson Aggregates Co. and the Ontario Stone, Sand & Gravel Association Response to the Motion

[14] It was Mr. Kemerer's opinion that the Motion does not highlight, in Exhibit B, all of the sections of the City's proposed OP, which are under appeal and therefore, the Motion should be dismissed.

[15] Mr. Kemerer was of the opinion sections of the OP may have been renumbered

since the revised red-line version was presented to the public on November 26, 2020, which could, perhaps, leave policies which are meant to be under appeal inadvertently approved.

[16] Mr. Kemerer stated, if the City is not seeking approval of the OP "at this time" on the sites identified on Exhibit D, why only a portion of the subject site subject to the proposed quarry expansion is shown. At a minimum, he stated Exhibit D should be modified to include all of the lands subject to the proposed quarry expansion and the existing quarry.

[17] Mr. Kemerer relied on the affidavit of Mr. Zeman, who suggested that without a transition clause attached to the new OP, it would give rise to significant confusion as any new development application would have to be reviewed against a largely in-force current OP and then again through the partial approved (new) OP. It was his opinion this would cause considerable uncertainty.

[18] Mr. Zeman's affidavit indicated that even if the new OP was partially approved, it is inoperative based on a lack of transition provisions, which, he stated are critical to ensuring that landowners with current applications are treated fairly.

[19] It was his recommendation that the Tribunal should allow for the hearings to proceed, as scheduled, so that the OP can be approved as a comprehensive, coherent, transparent planning document accessible to all. In his opinion, to do otherwise would not represent good planning.

FINDINGS AND ANALYSIS

[20] The Tribunal, in its evaluation, finds that the Respondent has not provided sufficient grounds to dismiss the Motion.

[21] Regarding Mr. Zeman's statement that partial approval of the new OP would lead to new applications being reviewed in a background of considerable uncertainty, the Tribunal

finds to the contrary, that to grant partial approval of a new OP allows the planning process to continue to move forward while matters under appeal are resolved.

[22] The Tribunal finds the issue regarding the lack of a transition clause making the OP inoperative, incorrect, as transition provisions do not override the *Planning Act*.

[23] The Tribunal notes that had a response been received by the City to the email of September 21, 2020, this matter could have been resolved prior to this hearing event. In the view of the Tribunal, there was ample time for the Appellant to, at the very least, provide comments, obtain information and receive clarification from the City.

[24] The Tribunal directs that a further CMC hearing by video will commence on **Tuesday, January 31, 2023, at 10 a.m.**

[25] The Tribunal directs that a phased Issues List be prepared for the CMC noted above.

[26] The Parties are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/344779885>

Access code: 344-779-885

[27] Parties are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at **GoToMeeting** or a web application is available: <https://app.gotomeeting.com/home.html>

[28] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **Toll-Free 1-888-299-1889 or +1 (647) 497-9373.**

The **access code** is: **344-779-885**.

[29] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[30] This Member may continue to assist with case management, however, is not seized of the CMC hearing.

ORDER

[31] **THE TRIBUNAL** grants the Motion, and confirms the following:

(a) the policies of the City of Burlington Official Plan that are the subject of multiple appeals are identified in Exhibit "B" of the sworn Affidavit of Alison Enns;

(b) the policies of the City of Burlington's Official Plan not subject to an appeal as identified in Exhibit "C" to the sworn Affidavit of Alison Enns are in full force and effect by operation of the *Planning Act*, R.S.O. 1990, c. P.13, as amended;

(d) no portion of the City of Burlington's Official Plan, except for the policies identified in Exhibit "C" to the Affidavit of Alison Enns under "*Planning Act* Protection – in full effect" is in force or effect upon the sites identified in Exhibit "D" to the sworn Affidavit of Alison Enns.

"D. Chipman"

D. CHIPMAN
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

SCHEDULE 1**OLT-22-002219/OLT-22-002483 – Attachment 1**

PL210040 Appellant Name(s)	Number	Does the Appellant have an appeal under File PL200150 OPA 119 & ZBA?	Counsel/ Representative
Ontario Stone, Sand & Gravel Association (OSSGA)	1		David White and Marc Kemerer
United Burlington Retail Portfolio Inc.	2		Aaron Platt/ Samantha Lampert
Crystal Homes	3		Michael Melling/ Alex Lusty
Landform Development Group and 2413350 Ontario Inc.	4	Yes	Denise Baker
1085 Clearview Limited Partnership (1085 Clearview GP Inc.)	5		Denise Baker
West End Home Builders Association	6	Yes	Denise Baker
440 Elizabeth Street Holdings Ltd	7	Yes	Denise Baker
2084 Lakeshore Holdings Ltd. and 2084 Lakeshore (2048) LP Ltd	8	Yes	Denise Baker
Emshih Developments Inc. (800 Burloak Drive)	9		Nancy Smith/ Jennifer Meader
Emshih Developments Inc. (895-901 Brant and 2250 Fairview Street)	10	Yes	Nancy Smith/ Jennifer Meader
Emshih Developments Inc. (372-380 and 433-439 Brant Street)	11	Yes	Nancy Smith/ Jennifer Meader
Carriage Gate Homes Inc., Lakeshore (Burlington) Inc. and Old Lakeshore (Burlington) Inc.	12	Yes	Scott Snider
1820473 Ontario Inc. and Molinaro Group of Companies	13		Scott Snider
Victoria-Brant Ltd., 2022 Victoria Avenue Inc., 2018 Victoria Avenue Inc., and 1664450 Ontario Inc.	14		Scott Snider
Renimmob Properties Ltd.	15	Yes	Scott Snider
Penta Properties Inc., Paletta International Corporation and P&L Livestock Ltd.	16		Scott Snider

Brookfield Properties, InteRent REIT and CLV Group Inc. (Fairview Limited Partnership)	17	Yes	Scott Snider/ Shelley Kaufman
Withdrew appeal	18		
New Horizon Development Group	19		Patrick Harrington/ Leo Longo
Brad Wilson	20		Self-represented
Wal-Mart Canada Corp.	21	Yes	Roslyn Houser
Millcroft Greens Corporation	22		Patrick Harrington/ Leo Longo
RK (Burlington Mall) Inc.	23		Joel D. Farber
Withdrew Appeal	24		
Pine Street Burlington Corp.	25	Yes	Denise Baker
Adi Developments (Masonry) Inc.	26	Yes	Denise Baker
Withdrew Appeal	27		
Withdrew Appeal	28		
RioCan Holdings Inc.	29		Joel D. Farber
335 Plains Holdings Inc. and 355 Plains Holdings Inc.	30		Denise Baker
Camarro Developments Inc. (789-795 Brant Street)	31		Denise Baker
Camarro Developments Inc. (519-527 Brant Street)	32		Denise Baker
Camarro Developments Inc. (1062 and 1074 Cooke Blvd)	33		Denise Baker
Infinity Developments Group Inc.	34		Denise Baker
Spruce Partners Inc. and Amico Properties Inc.	35	Yes	Denise Baker
5135 Fairview Holdings Inc.	36		Denise Baker
S & G Consulting Inc., Branthaven 735 Oval Inc., and Branthaven Development Corp.	37	Yes	Denise Baker
1602211 Ontario Ltd.	38		Denise Baker
William Love	39		Self-Represented
Nelson Aggregate Co.	40		David White and Marc Kemerer
Mac's Convenience Stores Inc.	41		Max Laskin/ Matthew Lakatos- Hayward

Core FSC Lakeshore GP Incorporated	42	Yes	David Bronskill/ Matthew Lakatos- Hayward
Vrancorp Group	43	Yes	David Bronskill/ Matthew Lakatos- Hayward
Reserve Properties Ltd.	44	Yes	David Bronskill/ Matthew Lakatos- Hayward
2584979 Ontario Inc.	45		David Bronskill/ Matthew Lakatos- Hayward
Burlington Healthcare Centre Inc.	46	Yes	Andrew Jeanrie
Emshih Development Inc. (901 Guelph Line)	47		Nancy Smith
Mattamy James Street Limited Partnership	48	Withdrawn	Scott Snider

Added Parties			
Fairview GO Ltd.			Jennifer Meader/ Scott Snider
Conserving Our Rural Ecosystems of Burlington Inc. ("CORE")			Denisa Mertiri / David R. Donnelly
Millcroft Greenspace Alliance			Daintry Klein (Rep.)
Metrolinx (PL200150 only)			Adriana Pilkington

Participants			
Tom Muir			Self-Represented
Anne and David Marsden			Self-Represented
Millcroft Coalition Against Development			Kirk Robinson (Rep.)

Additional Appellants for PL200150 Only			
Sofina Foods	1		Calvin Lantz
Welwyn Interests Inc.	8		Denise Baker
Adi Developments (Masonry) Inc.	13		Denise Baker
850 Brant Street Properties Inc.	22		Scott Snider