

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** March 15, 2023

**CASE NO.:** OLT-22-002323

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

Applicant and Appellant:	130 Wellington Corp.
Subject:	Application amend Zoning By-law No. 6593 - Refusal of Application by the City of Hamilton
Purpose:	To permit six dwelling units within the existing building, and to permit four parking spaces
Property Address/Description:	130 Wellington Street South
Municipality:	City of Hamilton
Municipal File No.:	BL 6593
OLT Case No.:	OLT-22-002323
OLT Lead Case No.:	OLT-22-002323
Legacy Case No.:	PL210234
OLT Case Name:	130 Wellington Corp. v Hamilton (City)

**Heard:** February 27, 2023 by video hearing

**APPEARANCES:**

**Parties**

130 Wellington Corp. –  
“Applicant/Appellant”

City of Hamilton

**Counsel**

P. Segreto

P. Kraemer

**MEMORANDUM OF ORAL DECISION DELIVERED BY ASTRID J. CLOS AND P. TOMILIN  
ON FEBRUARY 27, 2023 AND ORDER OF THE TRIBUNAL**

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[1] The Tribunal convened a Settlement Hearing (“Hearing”) with respect to an appeal brought pursuant to section 34(11) of the *Planning Act* (“Act”) by 130 Wellington Corp. (“Applicant/ Appellant”) for a property municipally addressed as 130 Wellington

Street South located in the City of Hamilton (“subject property”) due to the refusal of the Zoning By-law Amendment (“ZBA”) by City Council.

[2] The City of Hamilton Planning Staff presented a report to council which supported the application to permit 6 units and recommended approval of the ZBA. Council of the City of Hamilton refused the application. 130 Wellington Corp. subsequently appealed the refusal decision to the Tribunal. The Municipal Record was entered as Exhibit 1.

[3] A Case Management Conference was convened by the Tribunal which granted Party status to Jesse Razaqpur on behalf of himself, Sheila Strong and Mike MacMillan in accordance with Rule 8.4 of the *Tribunal Rules of Practice and Procedure*. The Residents’ Group formerly represented by Jesse Razaqpur is now represented by Sheila Strong and Mike MacMillan.

[4] The Order from the Case Management Conference had scheduled a 5 day hearing in May 2022 which was later adjourned at the request of the parties to allow settlement discussions to continue.

[5] The Tribunal was advised that the Parties have agreed to a settlement (“proposed settlement”). The effect of the revised Zoning By-law resulting from this proposed settlement is to amend the City of Hamilton Zoning By-law No. 6593 to permit 5 dwelling units within the existing building with 4 surface parking spaces in addition to site-specific zoning provisions and a Holding Zone with conditions.

## **LEGISLATIVE TESTS**

[6] The Tribunal in carrying out its responsibilities shall have regard to, among other matters, matters of provincial interest as set out in s. 2 of the *Planning Act* (“Act”).

[7] When deciding a planning matter, the Tribunal shall have regard to any decision made by a municipal council or approval authority and any information and material

considered by a council or approval authority in making the decision as set out in s. 2.1 (1) of the *Planning Act* (“Act”).

[8] A decision of the Tribunal in respect of any authority that affects a planning matter, shall be consistent with the *Provincial Policy Statement, 2020* (“PPS”) and shall conform with or shall not conflict with the *Growth Plan for the Greater Golden Horseshoe, 2020* (“GGH”) as set out in s. 3(5) of the *Planning Act* (“Act”).

[9] Any decision of the Tribunal shall be made pursuant to s. 24(1) of the *Planning Act* (“Act”), in that where an official plan is in effect, no by-law shall be passed for any purpose that does not conform therewith.

## **SUBJECT PROPERTY AND SURROUNDING AREA**

[10] The Subject Property is located on the west side of Wellington Street South, east of the intersection with Stinson Street. The property is currently occupied by a structure that includes 6 lodging house units at a density of 100 dwelling units per hectare. These dwelling units are contained within a structure having the built form of a 2.5 storey single detached dwelling.

[11] The Subject Property is currently accessed by a private laneway from Ford Street to the west. There is an existing garage and unpaved parking area in the rear yard of the property. In addition to the existing parking available on the Subject Property, there are also on-street parking spaces on both sides of Wellington Street South.

[12] There is a bus stop located at the corner of Wellington Street South and Grove Street, which is less than one block and less than 100 metres north of the Subject Property. This existing transit route also provides direct access to the transit service on King Street East and Main Street West, the location of the future Light Rail Transit (LRT) system to be constructed, as well as to the existing GO Train Station to the west on Hunter Street.

[13] The Subject Property is located within a residential community that includes a mix of dwelling types, including multi-storey apartment buildings, multiple dwellings and single detached dwellings. The properties to the north, east and west of the Subject Property include structures of a single-detached dwelling built form used for both single detached dwellings and multiple unit dwellings. The properties to the south of the Subject Property have been developed for two 8 storey apartment buildings and associated surface parking areas.

### **PROPOSED SETTLEMENT**

[14] The parties presented the executed Minutes of Settlement (“MOS”) dated November 14, 2022 entered as Exhibit 3.

[15] Schedule “B” of the Minutes of Settlement filed as Exhibit 3 consisting of the site-specific Zoning By-law Amendment in respect of 130 Wellington Street South is included as **Attachment 1** to this Decision.

### **PLANNING EVIDENCE**

[16] The Tribunal qualified one planning witness, Michael Barton (“Planner”) to provide expert opinion evidence in the discipline of land use planning. All Parties heard and consented to the content of the witness statement prepared by Mr. Barton entered as Exhibit 2.

### **Matters of Provincial Interest Planning Act (“Act”)**

[17] The Tribunal heard evidence from Mr. Barton that the zoning by-law contained in the proposed settlement has had appropriate regard for the applicable matters of provincial interest under Section 2 of the *Planning Act* in particular items f, h, h.1, j, n, o, p, q, and r.

**Provincial Policy Statement (“PPS”)**

[18] Mr. Barton provided evidence that the settlement is consistent with the Provincial Policy Statement 2020, in that the Subject Property is located within the existing “Settlement Area” of Hamilton, defined in Section 6.0 of PPS 2020 as a built-up area where development is concentrated, and which have a mix of land uses.

[19] Mr. Barton further provided evidence that, the 5 dwelling units will use land and municipal services efficiently in a location supported by convenient and regular transit service. The five dwelling units provide a variety in type and tenure of dwellings in the community by providing a greater number of rental units than could be accommodated in a single detached dwelling.

**Growth Plan for the Greater Golden Horseshoe (“GGH”)**

[20] The witness provided evidence that the Subject Property is located within the “Delineated Built-Up Area” by A Place to Grow – Growth Plan for the Greater Golden Horseshoe, 2020. Mr. Barton further provided that, the requested Zoning By-Law Amendment supports the concept of “complete communities” in Section 7 of the Growth Plan: “Places such as mixed-use neighbourhoods or other areas within cities, towns, and settlement areas that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options and public service facilities. Complete communities are age-friendly and may take different shapes and forms appropriate to their contexts”. He opined that these residential units contribute to the range and mix of housing options in the community that support the diversity of housing needs in terms of income, age and household size.

**Urban Hamilton Official Plan (“UHOP”)**

[21] Mr. Barton took the Tribunal through evidence related to conformity of the proposal to the Urban Hamilton Official Plan (“UHOP”). His evidence indicated that the

Subject Property is designated “Neighbourhoods” on Schedule E (Urban Structure) and Schedule E-1 (Urban Land Use Designations). In reviewing the policies identified in this document, it was Mr. Barton’s opinion that the City intends to achieve growth through appropriate and compatible intensification in the existing built-up area as opposed to urban sprawl and greenfield development.

[22] Mr. Barton continued that a key and critical component of the City’s growth strategy and objectives is to focus growth where existing services and infrastructure have already been developed, particularly transit and active modes of transportation. The proposal represents such growth by providing efficient and cost-effective land use in proximity to transit.

[23] Mr. Barton pointed out that while growth through intensification is identified in a number of the UHOP policies, it is clear that compatibility with the surrounding community is an important consideration. The proposal for the Subject Property in his opinion, achieves an increase in density and number of dwelling units within an existing building and, therefore, not at the expense of the comfort and enjoyment of existing residents in the community.

### **Hamilton Zoning By-law (“ZBA”)**

[24] Mr. Barton turned his mind to Zoning By-Law 6593, the Zoning By-Law of the former City of Hamilton (prior to amalgamation). This Zoning By-Law was adopted well before the current Urban Hamilton Official Plan and remains in force as Zoning By-Law 05-200 has not yet been applied to the Subject Property and surrounding community.

[25] Zoning By-Law 6593 was adopted in 1950 and does not reflect the current policy objectives of the City of Hamilton as set out in the Urban Hamilton Official Plan. As noted in Section 1.5 of UHOP, the Zoning By-Law is a key UHOP implementation tool and the intent is that the City prepare a Zoning By-Law that implements the goals, objectives and policies of the Plan. While former City of Hamilton Zoning By-Law 6593 remains in effect on the Subject Property and Zoning By-law 05-200 has not yet been

applied, Section 1.5.2 of UHOP authorizes the City to amend Zoning By-Law 6593 to achieve conformity with the Plan.

[26] Mr. Barton offered the opinion that the requested Zoning By-Law Amendment will allow for the continued use of the Subject Property as a multiple dwelling in a manner that is consistent and compatible with the surrounding community land use and built form character. In effect, the Amendment will update the zoning permissions and regulations on the Subject Property from those adopted in 1950 to reflect the current policy intent of the UHOP.

[27] Planner Barton has determined that four legal parking spaces can be accommodated in the existing rear yard without making any changes to the existing grading and surface material characteristics. The proposal intends to maintain the existing conditions in the rear yard to minimize disruption to the character of the surrounding neighbourhood. Access to the rear yard parking area will be maintained from the private laneway to Ford Street.

[28] Witness Barton reviewed the City of Hamilton staff Report PED21024 which stated that:

Zoning By-law Amendment Application ZAR-18-057 by 130 Wellington Investments Inc., to permit six dwelling units within the existing building and four parking spaces, for lands located at 130 Wellington Street South, Hamilton, be APPROVED and that the proposed change in zoning is consistent with the Provincial Policy Statement (2020), conforms to A Place to Grow Plan: Growth Plan for the Greater Golden Horseshoe, 2019, as amended, and complies with the policies and intent of the Urban Hamilton Official Plan.

[29] Michael Barton provided his concluding land use planning opinion that the requested Zoning By-Law Amendment proposed by the settlement:

- Has had appropriate regard for the applicable matters of provincial interest under Section 2 of the Planning Act,
- Is consistent with the Provincial Policy Statement, 2020,
- Conforms to the Growth Plan for the Greater Golden Horseshoe,

- Will amend Zoning By-Law 6593 in a manner that conforms to the Urban Hamilton Official Plan, and
- On this basis, represent good planning, is in the public interest and should be approved.

## **TRIBUNAL FINDINGS**

[30] The Tribunal accepts the uncontested planning opinion evidence of Michael Barton in its entirety and finds the amended Zoning By-law (Attachment 1) as put forward in the proposed settlement, meets all the relevant policy tests of s. 2 of the Planning Act, the Provincial Policy Statement, the Growth Plan, is in conformity with the Urban Hamilton Official Plan, represents good planning and is in the public interest.

[31] The Tribunal considered the information available to council, the original council decision and finally council's support of the revised zoning by-law contained within the Minutes of Settlement.

[32] The Tribunal finds that the revised Zoning By-law included as Attachment 1 satisfies the required legislative tests with reasons that include the following:

1. This proposed intensification will make efficient use of municipal services and infrastructure within the built-up area of an existing serviced settlement area,
2. The location is in proximity to public transit and will be transit supportive and encourage walkability through active transportation,
3. The proposed zoning will permit compatible intensification through the provision of five units at an appropriate scale within an existing building and not negatively impact the surrounding area,
4. The provision of on-site parking and site access have been appropriately



considered and addressed,

5. Potential noise impacts have been studied and condition (ii) of the Holding Zone will ensure appropriate implementation of any required mitigation,
6. The revision to the proposed zoning in section 2 a) reducing the number from 6 to 5 units thereby reducing any potential impact, and
7. The revised parking ratio in section 2 g) from 0.66 spaces per unit to 0.80 spaces per unit continues to require the provision of an appropriate number of 4 on-site parking spaces.

## ORDER

[33] **THE TRIBUNAL ORDERS** that the appeal is allowed in part, and that the City of Hamilton Zoning By-law No. 6593 is amended in the manner as set out in Attachment 1 to this Order.

*"Astrid J. Clos"*

ASTRID J. CLOS  
MEMBER

*"P. Tomilin"*

PAVEL TOMILIN  
MEMBER

### Ontario Land Tribunal

Website: [olt.gov.on.ca](http://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.

## ATTACHMENT 1

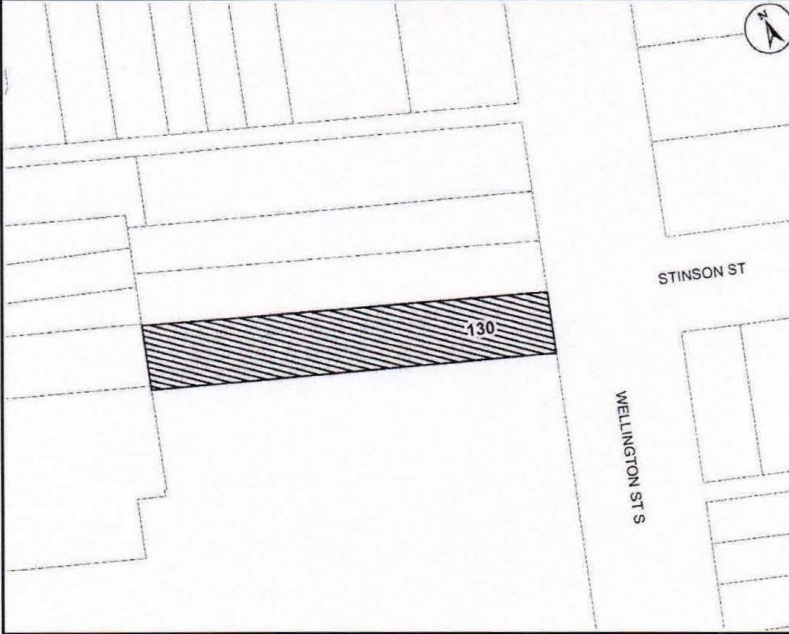

### Site Specific Zoning By-law Amendment

#### In respect of 130 Wellington Street South, Hamilton, Ontario

1. That Sheet No. E5 of the District Maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton), is amended by changing the zoning from the "D" (Urban Protected Residential – One and Two Family Dwellings, etc.) District to the "D/S-1806 - 'H'" (Urban Protected Residential - One and Two Family Dwellings, etc.) District, Modified, Holding; the extent and boundaries of which are shown on a plan here to annexed as Schedule A.
2. That the "D" (Urban Protected Residential – One and Two Family Dwellings, etc.) District provisions as contained in Section 10 of Zoning By-law No. 6593 applicable to the subject lands, be modified to include the following special requirements:
  - a) That in addition to Section 10 (1), a multiple dwelling with a maximum of five units shall be permitted within the building existing on the date of the passing of this By-law.
  - b) That notwithstanding Section 10 (3) (i), a front yard depth of 5.28 metres shall be permitted for the building existing on the date of the passing of this By-law.
  - c) That notwithstanding Section 10 (3) (ii), a side yard having a width of 0.44 metres on the north side of the building, and 0.64 metres on the south side of the building shall be permitted for the building existing on the date of passing of this By-law.
  - d) That notwithstanding Section 10 (4), a lot width of 9.75 metres and lot area of 631.0 square metres.
  - e) That notwithstanding Section 18 (3) (vi) (a), the encroachment of any chimney, sill, belt course, leader, pilaster, lintel or ornamental projections of the building existing on the date of the passing of this By-law shall be permitted.
  - f) That notwithstanding Section 18 (3) (vi) (b), the encroachment of any eaves or gutters of the building existing on the date of the passing of this By-law shall be permitted.
  - g) That notwithstanding Section 18A (1) (a) and Section 1 (g) of Table 1, the Minimum Parking Requirement for a Multiple Dwelling shall be 0.80 spaces per Class A Dwelling Unit.
  - h) Section 18A (1) (b) and Column 1 of Table 2, shall not apply.

- i) Section 18A (1) (c) and Column 1 of Table 3, shall not apply.
  - j) Section 18A (9) shall not apply.
  - k) That notwithstanding Section 18A (23), the driveway access shall be provided via the existing right-of-way to the alleyway.
  - l) Section 18A (25), shall not apply.
  - m) That notwithstanding Section 18A (28), lands in the adjacent "D" (Urban Protected Residential – One and Two Family Dwellings, etc.) District, which does not permit multiple dwellings, shall be used for the purpose of vehicular access to the existing multiple dwelling on the lands shown on Exception Map No. xxxx by way of the right-of-way currently providing access to the rear yard of the lands from the alleyway and roadway.
  - n) That Notwithstanding Section 18A (30), a permanent surface that is graded, drained and paved with concrete or asphalt, or a combination of concrete and asphalt, or gravel or similar surface shall be provided and maintained for every parking area, maneuvering space and access driveway.
  - o) Section 18A (32) shall not apply.
  - p) Section 18A (33) shall not apply.
3. That the 'H' symbol applicable to the lands referred to in Section 1 shall be removed conditional upon:
- i. That the Owner apply for a Building Permit to legalize a multiple dwelling with a maximum of five units, to the satisfaction of the Chief Building Official, Building Division.
  - ii. That the Owner implements the recommendations of the Noise Impact Study, dated December 7, 2018 in the application for Building Permit, to the satisfaction of the Chief Building Official, Building Division.
4. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "D" (Urban Protected Residential - One and Two Family Dwellings, Etc.) District provisions, subject to the special provisions referred to in Section 2.
5. That the Clerk is hereby authorized and directed to proceed with giving of notice of the passing of this By-Law in accordance with the *Planning Act*.

**APPROVED** in accordance with the decision and order of the Ontario Land Tribunal  
issued on \_\_\_\_\_, 2023.

	
<p>This is Schedule "A" to By-law No. 21-</p> <p>Passed the ..... day of ....., 2021</p>	<p>-----</p> <p>Mayor</p> <p>-----</p> <p>Clerk</p>
<p><b>Schedule "A"</b></p> <p><b>Map forming Part of</b></p> <p><b>By-law No. 21-_____</b></p> <p><b>to Amend By-law No. 6593</b></p>	
<p><b>Subject Property</b></p> <p>130 Wellington Street South</p> <p> Change in Zoning from the "D" (Urban Protected Residential - One and Two Family Dwellings, Etc.) District to the "D/S-1806-H" (Urban Protected Residential - One and Two Family Dwellings, Etc.) District, Modified, Holding</p>	
<p>Scale: N.T.S.</p>	<p>File Name/Number: ZAR-18-057</p>
<p>Date: November 26, 2020</p>	<p>Planner/Technician: SS/AL</p>
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>	
