

Ontario Land Tribunal

Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 23, 2022

CASE NO(S): OLT-22-002384
(Formerly PL190586)

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

Appellant	Dov (495 Richmond) Ltd.
Appellant:	T.K.S Holdings Inc.
Subject:	Zoning By-law
Description:	City of Ottawa Zoning By-law 2019-353
Reference Number:	BL 2019-353
Property Address:	City wide
Municipality/UT:	Ottawa/Ottawa
OLT Case No.:	OLT-22-002384
Legacy Case No.:	PL190586
OLT Lead Case No.:	OLT-22-002384
Legacy Lead Case No.:	PL190586
OLT Case Name:	Arnon Corp./Gilad Properties Ltd. v. Ottawa (City)

Heard: July 13, 2022 heard in writing

APPEARANCES:

Parties

City of Ottawa ("City")
T.K.S. Holdings Inc. ("TKS")
Dov (495 Richmond) Ltd. ("Dov")

Counsel

T. Marc
E. Blanchard and L. Robinson
E. Costello

DECISION DELIVERED BY WILLIAM R. MIDDLETON AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This matter proceeded as a settlement hearing in writing only on consent of the Parties, having been originally scheduled for an oral hearing on July 13, 2022 before the Ontario Land Tribunal (“OLT” or “Tribunal”).

[2] The materials filed in respect of the written settlement proceeding are as follows:

- (a) Notice of Motion of the City, comprising 3 pages, dated July 5, 2022;
- (b) Affidavit of Carol Ruddy, comprising 223 pages, sworn July 4, 2022 (“Affidavit”); and
- (c) Draft Order of the City, comprising 2 pages.

[3] The appeal relates to the resolution of a site-specific appeal of City By-law 2019-353 (“ZB”) concerning the property located at 264 Rideau Street in the City owned by the Appellant TKS (“Subject Property”).

[4] The City’s Notice of Motion seeks an Order modifying the ZB and an Order dismissing the balance of all other appeals except that of Dov which is to be adjourned sine die and points out that:

- (a) The Appeals other than by TKS and Dov have been withdrawn and the City has reached a resolution to the appeal by TKS; and
- (b) The City is expressly not requesting the Tribunal to make any finding in respect of the lands owned by Dov and it is proposed that Dov’s appeal be adjourned sine die and permitted to be brought back before the Tribunal, limited to seeking site specific relief, at a future date on such terms and notice as the Tribunal may Order

[5] On consent, the City's counsel submitted the Affidavit of Ms. Ruddy which stated that:

- (a) Ms. Ruddy is the Program Manager of the Zoning Unit in the City's Planning, Real Estate and Economic Development Department, has 19 years of professional planning experience with the City and was the co-lead of the City's Tall Building Project process, which resulted in the approval of the Urban Design Guidelines for High-Rise Buildings and the ZB which she was the principal author of;
- (b) She is a Registered Professional Planner and was qualified by the Tribunal, on consent, to provide opinion evidence to the OLT on land use planning matters in this proceeding;
- (c) On October 9, 2019, City Council approved new zoning provisions for high-rise buildings through the ZB, subsequent to which seventeen site-specific appeals and five appeals of the ZB were received which then led the Tribunal to schedule a two-week hearing from July 11, 2022 through July 22, 2022;
- (d) A settlement was reached between TKS and the City pursuant to which it is proposed that the ZB be brought into effect but also that a technical error in the ZB be corrected;
- (e) The intent of the ZB is to avoid or reduce impacts associated with high-rise buildings by maintaining access to light; maintaining privacy for occupants of buildings; preserving public views and sky views; and to implement policies in the City's Official Plan ("OP") which state the responsibility for providing appropriate tower separation should be shared between owners of abutting properties;
- (f) TKS seeks to construct two towers on a two-storey podium on the Subject Property under a design concept agreed to by the City, which provides a 16-metre separation distance between the towers, exceeding the 15-metre

separation distance required by the ZB but does not meet the 7.5 metre setback required for towers from side lot lines;

- (g) The City consents to this in light of the site-related constraints, being that: to the west at 256 Rideau Street, two 27-storey towers have been built to the side lot lines that have blank walls facing the lot line shared with the Subject Property; to the east at 290 Rideau Street, a 17-storey tower has been built to the side lot line which also has a blank wall facing the lot line shared with the Subject Property; and also to the east, a six storey building at 400 King Edward Avenue has been built to the side lot but the TKS proposal provides a 6-metre tower setback from that 6 storey building;
- (h) City staff are of the opinion that the proposed settlement is an acceptable solution to a constrained situation and that it meets the intent of the ZB to the extent possible given the challenges posed by the existing conditions on abutting properties because it is not possible for tower separation distances to be shared by abutting property owners where high-rise buildings have already been built to the side lot lines as described in (g) above;
- (i) Moreover, TKS has exceeded the required separation distance between towers on the same lot and has provided a separation distance of 6 metres from the side lot line shared with the six-storey building located at 400 King Edward Avenue;
- (j) The Urban Design Guidelines for High-Rise Buildings (“Guidelines”) apply to all development applications involving the construction of high-rise buildings. The draft zoning provisions affect lands in the urban area of the City, except for those areas specifically excluded in the draft provisions;
- (k) The proposed zoning provisions were a distillation of the many design-related issues considered in the Guidelines that could have been regulated using zoning, such as maximum floor plate size, minimum setbacks and step backs from property lines, minimum lot area, minimum requirements for publicly accessible space at grade, and tower separation distances;

- (l) The City's earlier OPA 150 introduced a set of policy directions for the design of high-rise buildings in Section 4.11. These policies were appealed and subsequently, revised policies were developed to resolve the appeals. A settlement package was approved by Council on April 24, 2019, and the settlement policies were brought to the Local Planning Appeal Tribunal on May 22, 2019. A written decision was issued by the Local Planning Appeal Tribunal on July 18, 2019 bringing the policies for high-rise buildings into effect, *Dolan v. Ottawa (City)*, 2019 CanLII 67637 (ON LPAT).
- (m) On October 9, 2019, City Council approved the zoning provisions for high-rise buildings in the ZB in the report ACS2019-PIE-EDP-0026, Zoning Provisions for High-Rise Buildings and amendment to correct an anomaly in the GM – General Mixed-Use Zone (the “2019 report”). The zoning provisions in the 2019 report were identical to the provisions brought to City Council in the report from the year before, save for one exception. In response to comments from property owners, an area of the central business district in the MD -Mixed Use Downtown Zone that was already developed with high-rise buildings was excluded from the lands subject to the provisions;
- (n) The zoning provisions for high-rise buildings do not apply to areas subject to a secondary plan that includes policies for tower separation distance and/or minimum lot area. Development applications in these areas will implement the policies for high-rise buildings in the secondary plan. The proposed zoning provisions are minimum standards. Council may continue to establish lower or higher standards in certain areas of the City through a secondary plan, based on the context of the area;
- (o) A technical amendment was also proposed in the 2019 report to correct an error in By-law 2014-292 concerning provisions in the GM – General Mixed-Use Zone. The By-law for that amendment was not appealed;
- (p) The ZB has regard to matters of provincial interest in subsections (h), (n) and (r) of Section 2 of the *Planning Act* R.S.O. (1990) c. P13 (“PA”);

- (q) The ZB was generally a conformity exercise in keeping with direction in Sections 16 and 26 of the PA. OPA 150 introduced a framework of policies for high-rise buildings to manage and direct physical change and the effects on the social, economic and built environment in the municipality, in recognition of the potential impacts of high-rise buildings if their development is not properly managed. The ZB also conforms with the City's OP as amended by OPA 150;
- (r) The ZB is also consistent with the Provincial Policy Statement, 2020 ("PPS") and represents good planning;
- (s) An error occurred concerning the provisions for the MD Zone in the 2019 report which on page 18 states, "The proposed provisions in the MD zone would require a 7.5-metre setback from the side and rear lot lines, for that portion of the high-rise building over a height equal to six storeys or the width of the right-of-way abutting the lot, whichever is less". However, on page 23 of the report, Document 2 – Draft Zoning Provisions, item 1. (j)(i) of the provisions for the MD Zone states, "for the purposes of this section, a tower is that portion of a building over six storeys.";
- (t) The words, "or the width of the right-of-way abutting the lot, whichever is less" were omitted in the Zoning Details, in error. Item 1. (j)(i) of By-law 2019-353 includes the same omission as in the Zoning Details. A modification to item 1.(j)(i) of By-law 2019-353 is needed to correct the omission, as follows: after the words, "for the purposes of this section, a tower is that portion of a building over six storeys" add the following words, "or the width of the right-of-way abutting the lot, whichever is less;"; and
- (u) An amendment to correct this error is included in the amending by-law in Attachment "1" hereto – By-law to amend Zoning By-law 2019-353.

[6] Based upon the unchallenged expert evidence of Ms. Ruddy summarized above in paragraph [5], the Tribunal is of the view that the settlement proposed by the City and TKS is fair and reasonable; satisfies the applicable requirements under the PA; is consistent with the relevant provisions of the PPS, 2020; conforms with the City's Official Plan as

amended by OPA 150; and respects principles of good planning. Therefore, the Tribunal approves this resolution and the amending by-law set out in Attachment “1” hereto.

[7] The Tribunal therefore Orders as follows:

- (a) Zoning By-law 2019-353 is modified by the amending By-law set out in Attachment “1” to this Order, subject to such final numbering and other related modifications as may be required by the City’s Solicitor;
- (b) The appeal of TKS is allowed and the balance of the appeals of Zoning By-law 2019-353 are hereby dismissed; and
- (c) The appeal by Dov (495 Richmond) Ltd. is not dismissed but is adjourned sine die and permitted to be brought back before the Tribunal, limited to seeking site specific relief, at a future date on such terms and notice as the Tribunal may establish following a written request from Dov (495 Richmond) Ltd. made within 12 months of the date of issuance of these Orders.

“William R. Middleton”

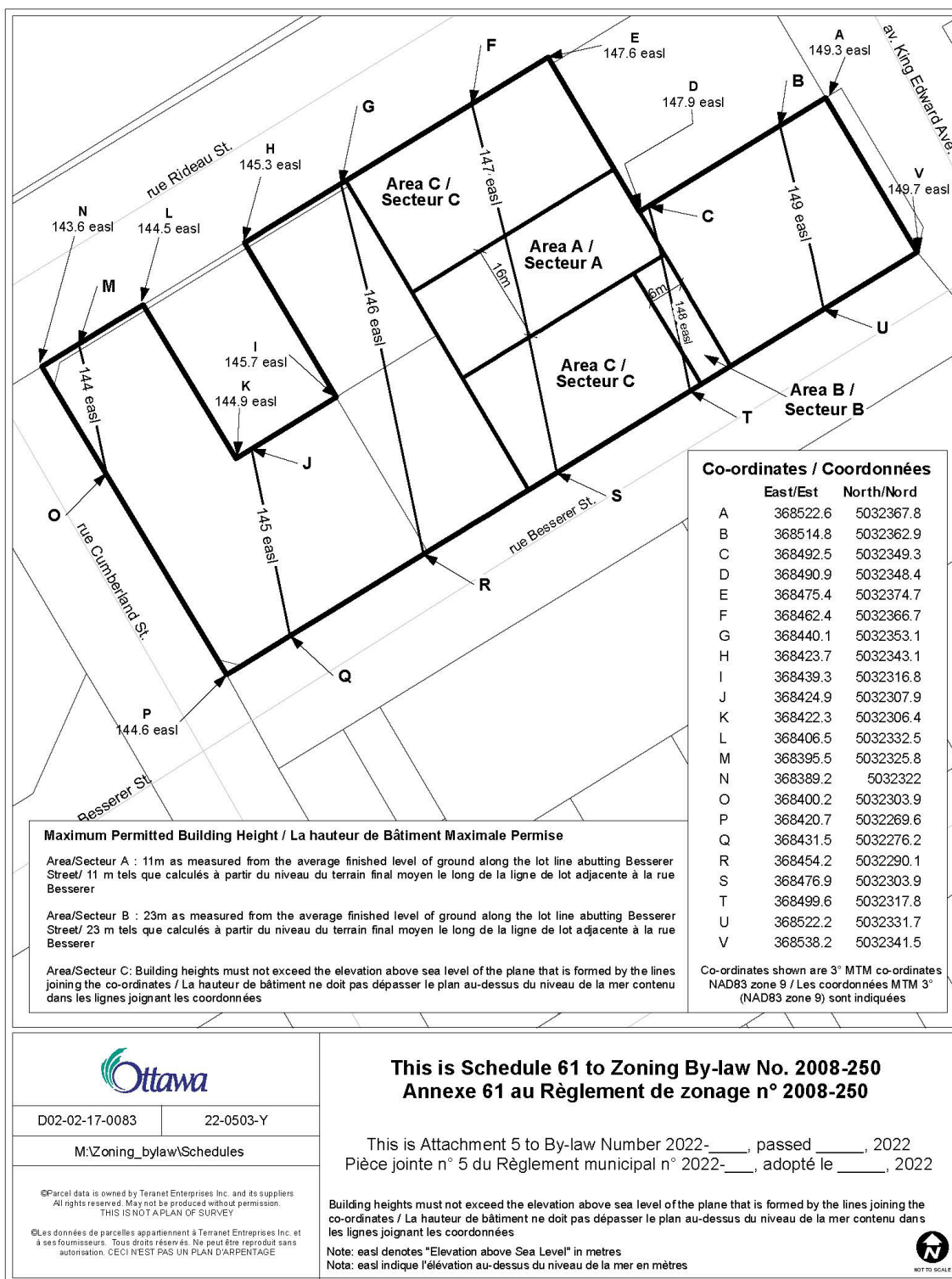
WILLIAM R. MIDDLETON
MEMBER

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.

ATTACHMENT "1" **By-law to Amend By-law 2019-353**





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LANDS AFFECTED PART OF THE ZONING
MAP OF BY-LAW NO. 2008-250

This is Attachment 4 to By-law Number _____, passed _____, 2022

Lands Affected by By-law

Area A to be rezoned from MD S61 to MD[2799] S61



BY-LAW NO. 2022- XX

A by-law of the City of Ottawa to amend By-law No. 2019-353, entitled, “A by-law of the City of Ottawa to amend By-law No. 2008-250 to implement provisions related to high-rise buildings” to implement changes resulting from the Ontario Land Tribunal Settlement.

The Council of the City of Ottawa, pursuant to Section 34 of the *Planning Act*, R.S.O.1990, enacts as follows:

1. Amend By-law No. 2019-353, entitled, “A by-law of the City of Ottawa to amend By-law No. 2008-250 to implement provisions related to high-rise buildings” as follows:

a) By adding a new Item 5 as follows:

“5. The Zoning Map of the said By-law No. 2008-250 is amended by rezoning the lands shown as Area A on Attachment 4 to this by-law from MD S61 to MD[2799] S61.

b) By adding a new item 6 as follows:

“6. Section 239, Urban Exceptions of the said By-law No. 2008-250 is amended by adding the following exception:

I Exception Number	II Applicable Zone	Exception Provisions			
		III Additional Land Uses Permitted	IV Land Uses Prohibited	V Provisions	
2799	MD[2799] S61.			- minimum interior side yard setback for the building including the podium and tower: 0m - maximum building heights are as shown on Schedule 61	

c) By adding a new item 7 as follows:

“7. Further amend Part 17 - Schedules of the said By-law 2008-250 by replacing Schedule 61 with Attachment 5 to this by-law.

- d) By amending item 1 by adding the text “or the width of the right-of-way abutting the lot, whichever is less;” after the text, “for the purposes of this section, a tower is that portion of a building over six storeys”

ENACTED AND PASSED this XXth day of MONTH, 2022.

CITY CLERK

MAYOR

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COUNCIL AUTHORITY:
City Council Month
Agenda Item XX
(PC **[ARAC]** Report No. xx)