

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



**ISSUE DATE:** August 26, 2022

**CASE NO(S).:**

OLT-22-003973

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

Appellant	Liam Casey
Applicant	Uniform Properties Limited
Subject:	Proposed Official Plan Amendment To amend the Richmond Road / Westboro Secondary Plan to increase the maximum building height of eight storeys to 12 storeys.
Description:	
Reference Number:	D01-01-20-0013
Property Address:	335 and 339 Roosevelt Avenue
Municipality/UT:	Ottawa/Ottawa
OLT Case No:	OLT-22-003973
OLT Lead Case No:	OLT-22-003973
OLT Case Name:	Casey v. Ottawa (City)

**Heard:** Written Hearing

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Uniform Properties Limited

Michael Polowin\*

Liam Casey

Self-represented

**DECISION DELIVERED BY M. APRINO AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This decision flows from a Motion to Dismiss an appeal without a hearing pursuant to s.17(45) of the *Planning Act* ("Act").

[2] The Applicant is the owner of 335 and 339 Roosevelt Avenue, 344 Wilson Avenue, and 379-389 Wilmont Avenue (“Property”) in the City of Ottawa (the “City”).

[3] The Property was the subject of a ruling of the Ontario Municipal Board (“OMB”) in 2014.

[4] The Applicant seeks to develop the Property with two (2) high-rise residential buildings and three (3) low-rise residential buildings containing a total of 361 residential units (“Proposed Development”).

[5] The Property is subject to Zoning By-law No. 2008-250 (“Zoning By-law”). The Proposed Development did not comply with the Zoning By-law.

[6] The Applicant applied for an amendment of the Zoning By-law. City Council approved the amendment, that decision was not appealed to the Tribunal.

[7] The Property is designated General Urban Area in the City Official Plan (“OP”). The Property is within the Richmond Road/Westboro Secondary Plan area. The Proposed Development did not accord with the OP.

[8] In 2020, the Applicant filed an application to amend the OP (“OPA”).

[9] On May 11, 2022, City Council adopted the OPA. Liam Casey (“Appellant”) appealed the decision pursuant to s.17(24) of the Act (“Appeal”).

[10] The Applicant filed a Motion pursuant to s. 17(45) of the Act (“Motion”).

[11] The Applicant is seeking:

1. An order of the Tribunal dismissing the Appeal without a hearing,
2. In the alternative, an order pursuant to s. 17(45) para 1(i) of the Act dismissing all aspects of the Appeal that are not supported by legitimate

land use planning grounds; and

3. Costs of this Motion.

[12] The City supports the Applicant's Motion seeking an Order of the Tribunal dismissing the Appeal without a hearing.

## LEGISLATIVE CONTEXT

s. 17(45) of the Act provides:

(45) Despite the *Statutory Powers Procedure Act* and subsection (44), the Tribunal may, on its own initiative or on the motion of any party, dismiss all or part of an appeal without holding a hearing if any of the following apply:

1. The Tribunal is of the opinion that,
  - i. the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Tribunal,
  - ii. the appeal is not made in good faith or is frivolous or vexatious,
  - iii. the appeal is made only for the purpose of delay, or
  - iv. the Appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process.

[13] The Tribunal may dismiss an appeal without a hearing if any one of the tests in s. 17(45) is satisfied.

## GROUNDS FOR THE MOTION

[14] The Applicant asserts that the Appeal should be dismissed because:

- a. the Appellant Form fails to provide legitimate land use planning grounds,
- b. the Appellant does not have genuine, legitimate and authentic planning reasons and will not be obtaining evidence to support these reasons,
- c. the Applicant submits that the Appellant does not intend to submit evidence in support of the Appeal, and
- d. the OPA represents good planning, is appropriate and in the public interest, is consistent with the Provincial Policy Statement, and conforms to the OP.

## PRELIMINARY MATTERS

### Status

[15] The Appellant asserts that the Applicant is not a Party to the proceedings and does not have status to bring the Motion.

[16] By correspondence dated July 15, 2022, the Tribunal provided clarification regarding this issue. "The Tribunal considers the following persons inherent Parties to it's proceedings - The Applicant, the Appellant and the Municipality."

[17] The Ontario Land Tribunals *Rules of Practise and Procedure* Rule 8 provides:

8.1 Role and Obligations of a Party: Subject to Rule 8.2 below, a person conferred party status to a proceeding before the Tribunal may participate fully in the proceeding, and by way of example may:

- (a) Identify issues raised in a notice of appeal for the approval of the Tribunal;

(b) Bring or respond to any motion in the proceeding (emphasis added)...

[18] The Tribunal is satisfied that the Applicant may participate fully in the Appeal. The Tribunal determined that the Motion to Dismiss the Appeal without a hearing is properly before it.

*Res Judicata*

[19] The Appellant asserts that the OPA is *Res Judicata*. He contends that the Applicant is precluded from applying for an amendment of the OP policies because the OMB rendered a decision regarding an application to amend the OP policies applicable to the Property in 2014.

[20] The Applicant responds that the Proposal is sufficiently changed from the previous application determined by the OMB and therefore it is not an issue of *res judicata*.

[21] As authority for this assertion the Applicant references the case *Holvay v. City of Toronto*, 2012 CarswellOnt 15250 (“Holvay”)

[22] It is uncontested that the decision in the *Holvay* establishes that *Res Judicata* is not an issue in circumstances where the details of an application are “sufficiently changed” from a prior application.

[23] The Appellant asserts that the threshold test of “sufficiently changed” has not been established in this case before the Tribunal.

[24] It was the Applicant’s uncontroverted submission that the 2014 OMB decision was decided under planning instruments that have since changed and with respect to the Property. The Property is larger than the land which was the subject matter in the 2014 OMB decision.

[25] The Applicant submits that the increased size of the Property, together with new elements to the Proposed Development and the changes to rapid transit in the area, render the Proposed Development sufficiently changed from the application determined by the OMB in 2014.

[26] The Applicant submitted the Affidavit evidence of Brian Casagrande in support of the Motion. Mr. Casagrande is a Land Use Planner who has previously been qualified by the Tribunal as an expert in land use planning.

[27] At paragraph 12 of Mr. Casagrande's Affidavit, he submits: "The Subject Lands are expanded from the 5,261 SM (1.3 acre) lands that were the subject of the aforementioned OMB hearing in that additional abutting lands were acquired along the southern border of the original lands in order to improve the opportunity to transition the proposed building height to the south where the closest low-rise housing exists. The revised lot area of the Subject Property is 7,169 (1.77 acres)." (emphasis added).

[28] At paragraph 39 of his Affidavit Mr. Casagrande states: "It is also important to recognize that proposed development, the implementing OPA and the Subject Lands have all been modified significantly since the OMB decision referenced in the Appellant Form."

[29] The Appellant asserts that the Applicant has not met the threshold test established in Holvay. The Appellant did not provide any evidence in support of this assertion.

[30] Based on the uncontroverted submissions of the Applicant and the sworn evidence of Mr. Casagrande, the Tribunal is satisfied that Proposed Development has sufficiently changed from the project before the OMB in 2014. The OPA is not *Res Judicata*.

## ISSUES AND FINDINGS

[31] In bringing this Motion the Applicant emphasizes s. 17(45) subparagraph 1 i. of the Act which permits the Tribunal to dismiss the Appeal if the Tribunal determines that the grounds for the Appeal, do not disclose any apparent land use planning ground.

[32] The Appellants' reasons for the Appeal can be summarized as follows:

- a. The decision of the City to adopt the OPA was made without regard to the 2014 OMB decision.

The OPA overturns the 2014 OMB decision regarding an application to develop the Property.

- b. The City could not legitimately adopt the OPA until it discharged its burden to confirm that there was a substantial change in the circumstances of the 2014 proposed project and the Proposed Development.

### Grounds for the Motion

[33] The Applicant asserts that the Appeal should be dismissed without a hearing because the reasons for the Appeal, identified in the Appellant Form 1 do not disclose any apparent land use planning ground upon which the plan or part of the plan that is the subject of the appeal could be approved or refused by the Tribunal.

[34] As authority for this assertion the Applicant refers to the decision in the case *Toronto Standard Condominium Corporation v 2-8 St. Thomas Holdings Inc* (2015), 2015 CanLII 24197 (ON LPAT). In paragraph 21 of his decision, Member Rossi provides "*The Board finds that if these were the issues at the heart of the appeal, these should have been mentioned by TSCC 1924 in its Notice of Appeal as the appeal document itself must contain the grounds of the appeal*".

[35] The Tribunal was provided with the sworn evidence of Mr. Casagrande providing his professional opinion as a Land use Planner that the reasons for the Appeal do not disclose any apparent land use grounds.

[36] The Applicant asserts that the Appellant had a responsibility to provide evidence in its response to the Motion to support the assertion that the reasons for the Appeal justify a hearing of the merits of the Appeal.

[37] As authority for this the Applicant refers to paragraph 73 of Member Ballagh's decision in the case of *Davidson v McKellar (Township)*, 2021 CanLII 58456:

It is incumbent upon persons launching an appeal to be prepared to have genuine, legitimate and authentic planning reasons and to have the evidence to support those reasons. The responsibility falls on the shoulders of the Appellant to demonstrate through his conduct in pursuing the Appeal, including his gathering of evidence to make his case, that the issues raised in his Notice of Appeal justify a hearing.

[38] The Appellant provided a 10-page response to the Motion. He states that he provided abbreviated reasons for the Appeal in an effort to be helpful and to indicate that the Appeal is "out of the ordinary".

[39] The Appellant asserts that the lack of land use planning reasons for the Appeal is not a basis for dismissing the Appeal without a hearing. The Appellant maintains that the Tribunal has jurisdiction to adjudicate appeals which do not include land use planning reasons.

[40] The Appellant asserts and submitted case law regarding the necessity to submit planning evidence in response to the Motion and in support of the Appeal.

[41] The matter before the Tribunal in the Motion is not regarding the necessity to submit planning evidence in support of the reasons for the Appeal.

[42] The Appellant failed to address the grounds for the Motion, specifically that the reasons in the Appeal do not raise apparent land use planning grounds.



[43] The Tribunal is left with reasons for the Appeal that are not supported by any objective evidence on the Motion. At the same time, the Tribunal has the Affidavit filed by the Applicant sworn by the Applicant's Planner Mr. Casagrande, who was qualified to provide expert opinion evidence in land use planning and who supports the Motion to Dismiss the Appeal.

[44] After carefully considering the submissions of the Parties, the Tribunal is of the opinion that the reasons set out in the Notice of Appeal do not disclose any apparent land use planning ground upon which the OPA could be approved or refused by the Tribunal.

### **COSTS**

[45] The Applicant seeks costs of this Motion.

[46] The delineation of the basis of a costs order is set forth in Rule 23.9 of the Ontario Land Tribunal *Rules of Practice and Procedure*. For convenience, that sub-rule is partially reproduced here:

The Tribunal may only order costs against a party if the conduct or course of conduct of a party has been unreasonable, frivolous, or vexatious or if the party has acted in bad faith.

[47] The Applicant alleges that the Appellant acted unreasonably and frivolously in this Appeal. This allegation is based on the Applicant's belief that the Appellant would not call witnesses in support of the Appeal.

[48] The Appellant responds that he did not conduct himself in an unreasonable or frivolous manner. He states that if he had behaved unreasonably, it was minor in nature and does not warrant costs be awarded against him.

[49] The Tribunal notes the Appellant's submission that he intended to rely on what he considered plain language of the planning documents that were part of the Municipal

Record. The Appellant submits that he is prepared to retain professional witnesses if directed to do so by the Tribunal.

[50] Having considered the conduct of the Appellant and the Applicant's submissions the Tribunal is satisfied that the Appellant intention in submitting the Appeal was genuine and made in good faith.

[51] The Appellant's decision not to submit independent evidence in response to the Motion and the possibility that he may not call professional witnesses at a merit hearing is not unreasonable, frivolous or vexatious.

[52] The Tribunal determines that a cost award is not appropriate.

[53] Based on the aforementioned, the Tribunal is of the opinion that the reasons set out in the Notice of Appeal do not disclose any apparent land use planning ground.

[54] As indicated above, the Tribunal may dismiss the Appeal without a hearing if any one of the tests in s. 17 (45) have been satisfied.

[55] **THE TRIBUNAL ORDERS** that the Motion is granted and the appeal by Liam Casey is dismissed.

*"M. Arpino"*

M. ARPINO  
MEMBER

**Ontario Land Tribunal**

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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.