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| **Ontario Land Tribunal** |
| Tribunal ontarien de l’aménagement du territoire |

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| **ISSUE DATE:**  | December 07, 2023 | **CASE NO(S).:** | OLT-23-000345 |

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

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| Appellant: | Randa El-Kadi |
| Applicant: | United Property Resource Corporation (“UPRC”) and Kindred Works Inc. |
| Subject: | Zoning By-law |
| Description: | To permit the development of a Planned Unit Development (PUD) consisting of 71 stacked dwelling units (six buildings) and 10 townhouse dwellings |
| Reference Number: | D02-02-22-0001 |
| Property Address: | 360 Kennedy Lane East  |
| Municipality/UT: | Ottawa/Ottawa |
| OLT Case No: | OLT-23-000345 |
| OLT Lead Case No: | OLT-23-000345 |
| OLT Case Name: | El-Kadi v. Ottawa (City) |

**PROCEEDING COMMENCED UNDER** subsection 19(1) of the *Ontario Land Tribunal Act, 2021,* S.O. 2021, c. 4, Sched. 6

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| Request by: | United Property Resource Corporation (“UPRC”) and Kindred Works Inc. |
| Request for: | Request for Dismissal Without a Hearing |

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| **Heard:** | October 20, 2023 by video hearing |

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| **APPEARANCES:** |  |
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| **Parties** | **Counsel\*/Representative** |
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| United Property Resource  | C. MacDougall\* |
| Corporation andKindred Works Inc. (together, the “Applicant”) | J. Sun (student-at-law) |
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| City of Ottawa (“City”) | T. Marc\* |
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| Randa El-Kadi (“Appellant”) | Self-represented |
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**DECISION DELIVERED BY S. TouSaw and j. innis AND ORDER OF THE TRIBUNAL**

[Link to Final Order](#Order)

**Introduction**

1. This Panel’s Decision dismisses the Appellant’s appeal to a Zoning By-law Amendment (“ZBA”), pursuant to s. 34(25) of the *Planning* Act (“Act”), and results in the ZBA coming into force retroactively to its date of passing, pursuant to s. 34(30) of the Act.
2. The ZBA permits a townhouse development of 81 units on a 1.2 hectare property at 360 Kennedy Lane East (the “site”) in Orleans. The site will continue to include the existing Queenswood United Church.

**Procedural Orders**

1. At this one-day hearing, the Tribunal rendered several oral Orders related to procedural matters prior to hearing submissions on the motion. As explained below, those Orders:
* granted Party status to the Applicant;
* deferred consideration of Added Party status to James Rycroft pending the outcome of the motion;
* granted the Applicant’s motion to quash a summons obtained by the Appellant;
* granted minor exemptions, under the Tribunal’s *Rules of Practice and Procedure* (“Rules”), to the delivery dates of the Parties’ various filings related to the motions and cross-motions for this hearing;
* denied the Appellant’s request to strike from the record the affidavits filed by the Applicant and the City; and,
* directed the Appellant to not present videos or other information via the internet at this motion hearing.

Party Status

1. The Appellant submitted that the Applicant should not be granted Party status, suggesting that adding another Party to oppose the appeal is unfair to the Appellant; and that the application was filed by a planning firm, not the Applicant. While the Tribunal did not accept these arguments, it noted that this unrepresented Appellant was unlikely aware of standard Tribunal procedures.
2. The Panel accepted the Applicant and City’s positions, referencing several Tribunal Decisions, that an Applicant is an “inherent Party” and acknowledging that such is a “presumptive right” that enables full and effective adjudication of the issues. In granting Party status, the Panel found that the Applicant’s obvious interest in the outcome of an appeal warrants its involvement, and that the Tribunal will benefit from evidence and submissions of the Applicant to enable a “fair, just and expeditious resolution” (Rule 1.3).
3. Having found that reasonable grounds exist to add a Party pursuant to s. 34(24.2) of the Act, the Panel granted Party status to the Applicant.

Added Party Status

1. Mr. Rycroft sought Party Status as a neighbour to the site and an active member of the local unincorporated community association, which, he advised, supports the Appellant. The Appellant supported the request on the basis that the Applicant had just been granted Party status.
2. The Applicant and the City opposed the request, citing Rules 8.2 and 8.3 to argue that this motion to dismiss relates to the Appellant only, and that the relevant Parties are now in place. The City added that it would not oppose granting Added Party status to Mr. Rycroft should a hearing on the merits proceed.
3. In deferring the Decision to a later stage in this proceeding, the Panel explained that, under Rule 8.3, Mr. Rycroft would be a non-appellant Party that must shelter under the issues raised by the Appellant. A sheltering Party cannot raise its own issues. Therefore, the validity of the appeal must be determined first to ascertain whether there is an appeal under which a Party may shelter. The Tribunal found it contrary to the Rules to enable an Added Party to assist in the Appellant’s defence to a motion to dismiss. An appeal must stand first, and then a sheltering Party may be considered.
4. With this written Decision now dispensing the appeal, no further consideration of Mr. Rycroft’s request for Party status will occur.

Summons

1. Prior to this hearing, the Appellant received administrative approval from the Tribunal for a summons to enable the questioning of Deanna Green, Transportation Engineer, being one of the authors of the Parking Study filed by the Applicant in support of the ZBA. The Appellant alleged that the number of vehicles per household calculated and planned for this site were improperly based on modal share analysis rather than the average number of vehicles per household in the area of this site.
2. Referring to Rule 13, the Applicant sought to quash the summons because the prerequisites were not satisfied by the Appellant: the intended witness was not contacted by the Appellant and given an opportunity to willingly agree (or not) to attend; and the summons was not served on the witness by personal service at least five days before the hearing. The Applicant also argued that Ms. Green is not an eligible receiver of summons for this hearing, as Ms. Green did not file an affidavit for this motion hearing and the requested information is available in the public record.
3. Referencing the similarities here with the Tribunal Decision in para. 59 – 77 of *CRAFT Acquisition Corporation v. Toronto* (City), 2017 CanLII 76246 (ON LPAT), the Applicant and the City submitted that a summons is inappropriate for what amounts to cross-examination in a motion to dismiss. They note the absence of any affidavit opposing the evidence on record where parking and traffic conditions were thoroughly reviewed and approved by City staff and by City Council through the ZBA process.
4. The Tribunal granted the motion and quashed the summons, but did not do so on matters of service of the summons, having found that: reasonable notice was given, albeit amidst blunders on both sides regarding the nature of service and the correctness of addresses; and sufficient time remained in advance of this hearing for the Applicant and Appellant’s filings on the issue of this summons.
5. Rule 10 sets out the procedures to be followed on a motion hearing. Rule 10.6 states:

10.6 A responding party shall serve a notice of response that:

1. states the response to be made, including a reference to any statutory provision or Rule to be relied on;
2. lists the documentary evidence to be used at the hearing of the motion; and
3. includes an affidavit setting out a brief and clear statement of the facts upon which the responding party will rely.
4. The Appellant filed a self-authored affidavit but did not file an expert’s affidavit to support the allegations in her appeal. Instead, she requested the issuance of a summons to require one of the Applicant’s experts to provide *viva voce* evidence at the hearing of the motion. There is no provision in the Tribunal’s Rules regarding *viva voce* evidence at a motion hearing; however, under extraordinary circumstances, to ensure a fair, just, expeditious and cost-effective resolution of the merits, the Tribunal has the ability to permit such evidence. In the present case, the Appellant has failed to demonstrate legitimate circumstances. The positions of the Applicant and the City to quash the summons are supported by: their experts’ affidavits; the thorough review of these concerns through the City’s ZBA process; and the existence of Ms. Green’s report and related City staff reports in the public record.
5. Rule 13(1)(c) states that the Tribunal may issue a summons where it is satisfied that the:

… evidence to be given by the witness named in the request for summons is relevant to the issues before the Tribunal, is necessary, and is admissible …

1. The Tribunal has the authority to control and direct the proceedings before it. In accordance with s. 12(2) of the *Ontario Land Tribunal Act*, Rule 1.4 states that the Tribunal may:

make orders and direct practices and procedures that offer the best opportunity for a fair, just, expeditious and cost-effective resolution of the merits of the proceeding.

1. In the present case, the Tribunal finds that the evidence that is proposed to be given by Ms. Green is not necessary and is already before the Tribunal in the form of her report. The fair and efficient way to contest this evidence would have been through the filing of a responding affidavit in compliance with Rule 10.6. The Appellant failed to do so.
2. The Panel noted the Appellant’s capable articulation of issues and advised that full consideration would be given to the Appeal and Motion filings, such that *viva voce* evidence was neither warranted nor necessary. The Panel quashed the summons.

Other Requests

1. The Panel denied the Appellant’s other requests, including finding that: the use of internet videos of City meetings is not helpful in this Motion Hearing; any intended documentation to be used that was not pre-filed with the Parties in accordance with the Rules will not be permitted; and the Applicant and City’s affidavits were duly executed and circulated, and will remain in the record for full consideration.

**Legislation**

1. The *Planning Act* (“Act”) and the *Ontario Land Tribunal Act* (“OLTA”) establish criteria for the consideration of dismissing an appeal without a full hearing on the merits (emphasis added below).
2. When making a decision under the Act, the Tribunal “shall have regard to … matters of provincial interest” (s. 2) and “shall have regard to” the decisions of City Council related to this planning matter and the information it considered when making its decisions [s. 2.1(1)].
3. On a motion to dismiss under s. 34(25) of the Act:

(25) … the Tribunal may … 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,
2. the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal,

1. the appeal is not made in good faith or is frivolous or vexatious …

…

3. The appellant intends to argue a matter mentioned in subsection (19.0.1) but has not provided the explanations required by that subsection. …

1. Subsection 3 above refers to s. 34(19.0.1) of the Act:

(19.0.1) If the appellant intends to argue that the by-law is inconsistent with a policy statement issued under subsection 3(1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan, the notice of appeal must also explain how the by-law is inconsistent with, fails to conform with or conflicts with the other document.

1. Under the OLTA s. 19(1):

19(1) … the Tribunal may … dismiss a proceeding without a hearing, …

(c) if the Tribunal is of the opinion that the proceeding has no reasonable prospect of success; …

1. As authorized by the *Statutory Powers Procedure Act* (“SPPA”) s. 4.6(1), the Tribunal’s *Rules of Practice and Procedure* (“Rules”) address jurisdiction in Rule 15.4:

15.4 The Tribunal may … dismiss a matter by adjudicative order where: …

(b) the initiating matter deals with matters that are outside the jurisdiction of the Tribunal; …

1. With reference to the foregoing provisions, and the Court and Tribunal Decisions addressed by the Parties, the Panel accepts as follows.
2. The grounds for dismissing an appeal are disjunctive: only one of the several grounds set out in the Act and OLTA must be satisfied to warrant dismissing an appeal.
3. With reference to *Toronto (City) v. East Beach Community Association* [1996] O.M.B.D. No. 1890, 42 O.M.B.R. 505 (“East Beach”), the Panel accepts as follows at paragraph 9:

With respect to the tests specifically stated in … [s.] 34 (25)(a)(i), it is our view that these provisions allow the Board to examine whether there has been disclosure of planning grounds that warrant a hearing … The Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons … What these particular provisions allow the Board to do is to seek out whether there is authenticity in the reasons stated, whether there are issues that should affect a decision in a hearing and whether the issues are worthy of the adjudicative process.

1. The Appellant must respond to a motion to dismiss by adequately demonstrating that there are “genuine, legitimate and authentic planning reasons” warranting a hearing on the merits.

**Contextual Facts**

1. Affidavits (“affidavit/s”) were filed on the merits of the appeal and the Panel hereby qualifies the authors to provide opinion evidence in their field of expertise:
2. For the Applicant: Dana Anderson, Registered Professional Planner
 Alun Lloyd, P. Eng., Transportation Engineer
 Ding Bang Yang, P. Eng., Civil Engineer
3. For the City: Lucy Ramirez, Planner.
4. This 1.2 hectare site fronts onto Kennedy Lane East (“Kennedy”), is largely vacant, and includes a small church and parking lot. The site abuts a retirement home to the north and the substantial Queenswood Ridge Park (“park”) to the south, containing playgrounds, activity structures, and open space features including soccer and baseball fields. The site faces two-storey townhomes across Kennedy to the west, including the Appellant’s dwelling, and backs onto the rear yards of detached dwellings to the east.
5. The proposal is for 71 stacked townhouse units in three-storey buildings and 10 two-storey townhouse units, for a total of 81 rental units. Thirty percent of units are proposed to be rented at the regulated affordable housing rate. Each of 61 units will have an on-site parking space and 20 units (25% of all units) will not. Parking spaces for visitors and the church are also provided.
6. A major shopping mall and associated commercial area, bus service, and future Light Rail Transit are all within a short walk from the site, reflecting a “15 minute neighbourhood” espoused by the City’s current Official Plan ("OP”).
7. The as-of-right Zoning By-law No. 2008-250 (“ZBL”) permits a taller building height and greater unit density on this site than proposed through this ZBA.
8. On-street parking, as regulated by the City, is a common and extensive occurrence on Kennedy and other nearby streets used by area residents and users of the park.
9. As is common in municipal planning, the practice of the City is to impose and ensure adequate stormwater management facilities through its Site Plan Approval (“SPA”) process.

**Submissions**

Applicant and City

1. The Applicant, with support of the City, submits as follows based on the affidavits.
2. The Applicant submits that the Appellant’s issues were duly received and considered through the public process for this ZBA. The issues can be characterized as “apprehension based on speculation or uncorroborated concerns and questions that do not constitute genuine, legitimate and authentic planning issues” for adjudication.
3. The Applicant submits that the as-of-right uses permitted by the ZBL could result in higher density and greater traffic than proposed for this site. This ZBA reduces the permitted building height. Safe and unobstructed access to the Appellant’s home are not affected by this development regarding sight lines, collision history, and traffic effects for all modes of travel. On-street parking and stormwater matters are regulated by City By-laws that are outside the relevant considerations for a ZBA. The affidavits confirm that sanitary and stormwater capacity exists and the development will improve drainage conditions along Kennedy, all to be addressed through the SPA.
4. The Applicant submits that its planning and engineering affidavits are not contested and demonstrate that the ZBA satisfies all applicable tests under the Act. Although referencing matters that may be frivolous or vexatious, the Applicant focusses on the absence of planning grounds and no reasonable prospect of success, and requests the Tribunal to dismiss the appeal.
5. In concurring with the Applicant’s submissions, the City qualifies that it does not endorse the request to find that the appeals were not filed in good faith or are frivolous or vexatious.
6. The City emphasizes that the new 2022 OP includes five “big policy moves” that are supported by this proposal and its implementing ZBA. On the City and Applicant’s planners’ uncontested affidavits, all requirements of the Act have been fulfilled and the appeal should be dismissed.

Appellant

1. The Appellant responds that the appeal is “genuine, authentic and legitimate” as espoused by Tribunal Decisions. The focus is on matters of public health and safety, having streamlined the issues by setting aside previous concerns over intensification, design and massing. Housing intensification is supported.
2. The Appellant submits that the affidavit authors have worked remotely and are not familiar with the local circumstances along Kennedy, such as the truck traffic and noise that may affect the development or the reduced sight lines in winter. Relevant demographic data were excluded from a survey report relied on when assessing the parking requirements for this site. The proposed reduction of 33 parking spaces will have definite, negative effects on Kennedy and the neighbourhood.
3. The Appellant submits that public health and safety, and stormwater management have not been addressed sufficiently through this ZBA, as required by the Act, including s. 2 of the Act, s. 1.1.1.c) and s. 1.6.6.7 of the Provincial Policy Statement, 2020 (“PPS”), and s. 13 of the OP. The safety and traffic issues along Kennedy are clearly established by the visual evidence filed, which should carry more weight than the assumptions and speculations upon which the affidavits are based.
4. The Appellant requests that the motion be denied as these valid issues warrant a full hearing on the merits.

**Issues and Findings**

1. The Panel grants the motion and dismisses the appeal.
2. The Panel finds that the Appellant’s issues centre around road issues along Kennedy: traffic; sight lines; safety; on-street parking; and drainage. The Appellant is not opposed to the use of the site for townhomes, just the effects of the land use on the existing conditions on Kennedy.
3. The Panel notes the absence of expert affidavit(s) from the Appellant. While the presentation of contrary evidence to the Applicant or City’s experts is not mandatory, it leaves the Panel with little recourse for the Appellant. The Appellant capably articulated her concerns, including reference to studies and photographs, but failed to proffer legitimate reasons of a land use planning nature relevant to this site. Again, the Appellant’s focus is on Kennedy.
4. The Appellant’s position that on-street parking along Kennedy is essentially full much of the time, leads the Panel to question how the use of Kennedy will change resulting from this site. If street parking is occupied, the residents and visitors to this site will need to park on-site (or elsewhere) or arrive by transit and walking. The Panel is satisfied on the affidavit evidence that effects on Kennedy will be minimal, acceptable, and normal for this residential area. Moreover, the regulation and enforcement of street parking on a municipal road allowance is a City authority for which the Tribunal has no jurisdiction.
5. The ZBA requires no on-site parking space for some 25% of the units on this site, in support of affordable housing. The other 75% of units will have one on-site parking space, and visitor parking will be provided at a rate almost identical to the ZBL requirement (understood to be one space shy). The effects of these provisions are duly evaluated and promoted by the Applicant and the City regarding Provincial and City policy directives for affordability, walkable communities, fewer automobiles, support and use of transit, and reducing carbon emissions.
6. The Appellant’s related matters of traffic, sight lines and safety on Kennedy are, again, issues for the City, not the Tribunal as they are focused on the existing situation. Kennedy is a busy residential street. On-street parking appears to be common and permitted for residents, visitors and park users alike. The Appellant’s awareness from her driveway of limited sight lines due to Kennedy’s curve and winter snow accumulation are not affected by this proposal. The Appellant will view cars entering or exiting the site directly across from her driveway. Moreover, the site is on the outside curve of Kennedy, which will not entail the limited sight lines experienced at the Appellant’s property on the inside curve. Overriding the Appellant’s concerns is the accepted fact that this site is capable of being used for a greater density, with larger traffic effects, through the parent ZBL than enabled by this ZBA.
7. The Appellant is concerned that stormwater is to be redirected toward Kennedy, which will exacerbate existing drainage issues. The Applicant and the City confirm to the contrary, that drainage issues along Kennedy will be somewhat improved given the intended requirement, under SPA, for stormwater retention on the site. The Panel is satisfied that the City will impose required drainage conditions through SPA, as is its practice and expertise. The Panel finds that, in the absence of evidence to the contrary, this appeal issue is addressed and has no reasonable prospect of success.
8. With a focus on s. 34(25) of the Act, the Panel finds that the Appellant failed to sufficiently set out reasons related to an apparent planning issue to substantiate the appeal as required by ss. 1.i. The uncontested expert opinion affidavits in this motion confirm that the multi-modal transportation system, the intended function and use of Kennedy, and the number of on-site parking spaces permitted by the ZBA, are all acceptable. The positions advanced by the Appellant do not constitute relevant reasons upon which the Tribunal could allow all or part of the appeal.
9. Also, under s. 34(25)(3) of the Act, the Panel finds that the Appellant has failed to explain how the ZBA is inconsistent with the PPS or fails to conform with the OP. Having considered the Appellant’s focus on certain policies and the expert planning opinion affidavits, the Panel finds that the ZBA: is consistent with the PPS s. 1.1.1(c) – public health and safety have been addressed sufficiently, including parking, traffic, sidewalks, and the proximity of nearby shopping and services; and s. 1.6.6.7 – stormwater management will be improved and addressed through the mandatory SPA; and conforms with OP s. 13 – promoting safe communities as noted above; and s. 4.1.4.2 – this site contributes to a gradual reduction in the parking supply within the broader community.
10. Having found that the appeal will be dismissed, the Panel accepts the Applicant and City’s affidavits opining that the ZBA satisfies the requirements of the Act: due regard to matters of provincial interest; consistent with the PPS; and conforms with the OP.
11. In making this Decision, the Tribunal has considered the related decisions of the City Council and the materials it had on hand. Of note is the City’s deferral of the ZBA to require further study and review of traffic and parking concerns, that were addressed by the Applicant and completed to the City’s satisfaction prior to passing the ZBA.
12. For the foregoing reasons, the Tribunal finds that this appeal satisfies each of the legislative provisions which result in its dismissal, as it: fails to disclose any land use planning ground upon which the Tribunal could allow all or part of the appeal; fails to provide adequate explanations on how the ZBA is not consistent or does not conform with applicable policies in the PPS and OP; has no reasonable prospect of success; and involves matters outside the jurisdiction of the Tribunal.
13. By way of postlude, the Panel hopes that the Appellant considers that her “day in court” was held through this motion hearing. While not a full hearing on the merits, the Tribunal has heard and carefully considered the concerns and rationale of the Appellant. The Tribunal accepts that the issues are of genuine concern to the Appellant, but finds that they fail to constitute matters upon which the Tribunal could allow some or all of the appeal.

**ORDER**

1. The Tribunal Orders that:
* the motion is granted, in part;
* the appeal is dismissed, pursuant to s. 34(25)1i and s. 34(25)3 of the *Planning Act*, s. 19(1)(c) of the *Ontario Land Tribunal Act*, and s. 15.4(b) of the *Statutory Powers Procedure Act*; and
* the City of Ottawa Zoning By-law No. 2023-147 is deemed to have come into force on the day it was passed, pursuant to s. 34(30) of the *Planning Act*.

*“S. Tousaw”*

S. tousaw

Vice-Chair

*“J. Innis”*

J. Innis

MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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