

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 13, 2024

CASE NO(S): OLT-24-000013

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

Appellant: Ancaster Space Station Inc.
Subject: Proposed Official Plan Amendment No. 193
Description: To facilitate the development of a five-storey warehouse building with 46 parking spaces
Reference Number: UHOPA-23-017
Property Address: 1225 Old Golf Links Road
Municipality/UT: City of Hamilton
OLT Case No.: OLT-24-000013
OLT Lead Case No.: OLT-24-000013
OLT Case Name: Ancaster Space Station v. Hamilton (City)

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

Appellant: Ancaster Space Station Inc.
Subject: By-law No. 23-223
Description: To facilitate the development of a five-storey warehouse building with 46 parking spaces
Reference Number: ZAC-23-041
Property Address: 1225 Old Gold Links Road
Municipality/UT: City of Hamilton
OLT Case No.: OLT-24-000014
OLT Lead Case No.: OLT-24-000013

Heard: May 23 to May 24, 2024 by Video Hearing;
June 4, 2024 by Written submissions

Parties

Ancaster Space Station Inc.

Counsel

Jennifer Meader

City of Hamilton

Peter Krysiak

DECISION DELIVERED BY JACKIE DENYES AND ORDER OF THE TRIBUNAL

[Link to the Order](#)

INTRODUCTION

[1] This was a two-day Merit Hearing convened for Appeals brought pursuant to s. 17(24) for an Official Plan Amendment (“OPA”) and s. 34(19) of the *Planning Act* for Zoning By-law Amendment (“ZBLA”) by Ancaster Space Station Inc. (“Applicant”/Appellant”) to facilitate the development of a five-storey Self Storage Warehouse (“SSW”) building with 46 parking spaces municipally addressed as 1225 Old Golf Links Road, in the City of Hamilton (“City”).

[2] The OPA would have the effect of:

- (a) redesignating the lands from Open Space to Mixed Use – Medium Density in the Urban Hamilton Official Plan (“UHOP”); and,
- (b) redesignating the lands from General Open Space to Mixed Use - Medium Density in the Meadowlands Mixed Use Secondary Plan and allowing for an SSW use on a site-specific basis.

[3] The ZBLA would have the effect of:

- (a) rezoning the lands from Public to Mixed-use Medium Density;
- (b) allow for an SSW use on a site-specific basis;

- (c) establish four site-specific performance standards in respect of the SSW use relating to setbacks, height, and the location of the principal entrance; and,
- (d) place Holding Provisions *inter alia*, to ensure the urbanization of Old Golf Links Road at the owner's expense.

[4] The City's Planning and Economic Development Report supported the proposed OPA and ZBLA, and recommended approval of the site-specific provisions to permit the proposed five-storey SSW. The Planning Committee also approved the applications, as amended, deleting only the SSW as a permitted use. All other site-specific performance standards were approved as follows:

- (a) the requested maximum height of 18.8 metres ("m"), whereas 14 m is permitted as there is no sensitive land uses or residential properties impacted;
- (b) the requested 1.0 m setback from the rear property line of the proposed development abutting the Lincoln M. Alexander Parkway, also known as the "LINC"; and,
- (c) the location of the proposed principal entrance is proposed to face west as it is joined by a sidewalk.

[5] The Tribunal notes that through the Public Consultation Strategy, and public notices, no public responses or correspondence was received throughout the application process.

SUBJECT PROPERTY AND SURROUNDINGS

[6] The Subject Property is a remnant parcel of land situated in what is known as the Meadowlands Neighbourhood which is a master-planned community. Approximately half of the western portion of the Subject Property is covered by an easement in favour of Hydro One and no permanent structures can be built on this portion of the Subject

Property. The developable portion of the Subject Property is irregular due to the angular rear lot line. The Subject Property has 155 m of frontage and is approximately 0.5 hectares (“ha”) in size; only about 0.2 ha and 91 m of frontage is buildable.

[7] The Subject Property is located on a dead-end municipal gravel road. It is not currently served by municipal services (water, sewer, and stormwater). Part of the application proposal is that this gravel road portion be urbanized. The Subject Property has been historically vacant.

[8] The LINC is an active thoroughfare which lies north of the Subject Property.



FOCUS OF THE APPEAL

Requested Relief

[9] Jennifer Meader, on behalf of the Applicant, indicates there is only one narrow issue on this Appeal and that is, whether SSW use should be permitted on the Subject Property. Peter Krysiak agrees.

Position of the Parties

[10] It is the position of the Applicant that the Subject Property was purchased for the sole purpose of constructing an SSW as they are in the business of building and operating SSWs.

[11] Ms. Meader, on behalf of the Applicant, submits that in considering the characteristics of this unique site, an SSW is an appropriate use and will allow for the compact and efficient use of a vacant property, including an energy-efficient building. Further, the use will contribute to the range of commercial uses in the overall commercial district that will promote economic growth and competitiveness for the City; that the proposed use is complementary and compatible with the secondary plan area and will allow for the urbanization of a public right-of-way with direct pedestrian connection to the site.

[12] Mr. Krysiak, on behalf of the City, supports the redesignation of the Subject Property from General Open Space to Mixed-Use – Medium Density, which is good planning but opposes the ZBLA to allow for an SSW on the Subject Property as it is a low intensity use, not pedestrian and transit supportive, presents limited employment opportunities, and an SSW does not respect the existing character, development pattern and built form of the area as it will be situated on an undersized lot with reduced setbacks and increased lot coverage.

HEARING

Planning Evidence

[13] The Tribunal received and marked 13 exhibits, and heard extensive *viva voce* evidence from three planners who were duly qualified as experts in the field of land use planning:

- a. Ryan Ferrari, on behalf of the Applicant;
- b. Johnpaul Loiacono (under summons), on behalf of the Applicant; and,
- c. Allan Ramsay, on behalf of the City.

Ryan Ferrari, RPP, MCIP, CPT

[14] Mr. Ferrari reviewed the process and history of the Application as it pertained to the Staff Report of Johnpaul Loiacono that recommended full approval of the applications including the Self-Storage use. However, at the time of the Planning Committee's vote, a new motion by a Ward Councillor was approved to amend the recommendation by removing any reference to a Self Storage facility.

[15] Mr. Ferrari provided an extensive visual analysis of his neighbourhood walk-about from intersection to intersection from Old Golf Links Road pointing out commercial plazas, wide boulevards, medium density residential uses, and large retail commercial stores and eventually, heading back down to Old Golf Links Road pointing out the hydro lines over the Subject Property and the entrance to the transformer station where it eventually ends in an unmaintained cul-de-sac. He alluded to the fact that there is currently a dormant outstanding application for the construction of a six-storey building adjacent to the Subject Property separated by a berm and naturalization between the properties which, if built, would fit the character of the proposed development.

[16] Mr. Ferrari explained the proposal concept is intended to operate on a self-serve basis and not operate as a shipping warehouse. The building would contain storage units for rent. A loading area and elevators allowing customers to drop off and store their items. A small office intended for the administration of the building. The floor area of the facility is 1,859 square metres ("sq m") resulting in a lot coverage of 32% on the Subject Lands. The total gross area is 10,666 sq m. The site would also include 46 surface parking spaces with one-barrier free parking space. No outdoor storage is proposed.

[17] Through his testimony, Mr. Ferrari indicated the Applicant will be required to upgrade Old Golf Links Road with curbs, sidewalks, streetlights and may be required to extend municipal services through an agreement with the City before there is construction. He asserted those conditions would apply to anyone owning the Subject Property despite its intended use.

Johnpaul Loiacono – Senior Planner (City of Hamilton)

[18] Mr. Loiacono testified under summons. He reviewed the circulation of his Staff Report prepared for the Planning Committee dated November 14, 2023. He testified no department within the City had any objection to the proposal. To ensure City Staff could be confident in recommending the proposed approval, he opined the Holding Provisions were recommended to address potential engineering concerns and the constrained timelines of Bill 109 (*“More Homes for Everyone Act”*) and its impact on the development approval process to enable a robust pre-application package for staff to review in advance of a formal submission. He testified Staff recommended the designation change to Mixed-Use Medium Density both in the OP and Secondary Plan, and a change in Zone from Public Zone to the Mixed-Use Zone (*“C5 Zone”*). Mr. Loiacono’s opinion being that the site-specific use for SSW should be added for the OPA policy area and adding the site-specific use to the C5 Zone for the ZBLA.

[19] When drafting the OPA and ZBLA he used *“parenthesis”* for *“warehouse”* to particularly denote the definition of *“permit self storage use”* as opposed to requiring the greater permissions of a warehouse distribution centre.

[20] He suggested that storage centres are difficult to site. It is his opinion that SSWs are more appropriate for mixed-use areas. While he agrees, in his staff report, there could well be scenarios that this proposal is appropriate for an industrial area, he disagrees with Mr. Ramsay’s suggestion that this is an industrial use in the form that is being proposed (i.e., *“going high”* as in five storeys).

[21] Mr. Loiacono adopted the higher policy principles articulated by Mr. Ferrari and confirmed the proposal had merit, is consistent with the Provincial Policy Statement, 2020 (“PPS”), conforms to the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”) and general intent and purpose of the UHOP and Secondary Plan, subject to the site-specific OPA getting approved; and the ZBLA would conform as proposed to the OPA. He believed the proposal represents good planning and is in the public interest because of the number of restraints being considered and that the proposal is appropriate for its intended use.

[22] He agreed with Mr. Krysiak, in cross-examination, that “he guessed” at some of the permissions listed in the Commercial Mixed Use (C5) Zone would represent a more intensive use than a self-storage use.

[23] In re-examination, in terms of the intensity for this SSW and understanding the constraints at this site, he indicated he would consider the proposal to be intensive use of this property and that is why he recommended its approval.

Allan Ramsay, M.C.I.P., R.P.P.

[24] Being the third planning witness to testify, Mr. Ramsay, at the risk of redundancy, relied on the extensive description of the site and surrounding area of the Subject Property as well as the history and the proposal’s comprehensive review as given by Mr. Ferrari and Mr. Loiacono.

[25] Mr. Ramsay suggested that the proposed SSW is actually a six-storey building as the lower level is considered a cellar but nonetheless represents six levels of storage. He directed the Tribunal to Amendment No. 193 of UHOP “Actual Changes” and “Maps and Appendices”, which add a site-specific policy Area C:

For the lands located at 1225 Old Golf Links Road...the following policies shall apply:

- (a) Notwithstanding Policy B.2.4.3 of Volume 2, a warehouse (self-storage) building with a maximum height of five storeys shall be permitted.

[26] Referencing the ZBLA, he suggested the By-law adopted by counsel deals with a map change, a change to the schedule and changes the zoning category to a Mixed Use – Medium Density C5 Zone exception 873, which deals with the reduction in setbacks, elevations and 161 holding provisions.

[27] Regarding the nature of the proposed use, Mr. Ramsay has reviewed studies that indicate people might visit a storage locker once a month or every six weeks or more or less frequently. He discovered, in his research, SSW can take the form of three styles (1) converted industrial building, (2) simple style barracks or multi-storey. He characterized the proposal as a warehouse-type building with little design enhancements. He referred to an inventory list, although not exhaustive nor complete and Location of Warehouses within the City.

[28] He considers the site to be a development site indicating it does have permission in the OP and ZBL for commercial and residential uses up to seventy units per hectare and six storeys in height. It was his opinion the area should be well-served by public transit and Hamilton Street Railway routes.

[29] Both Mr. Ferrari and Mr. Ramsay provided an extensive policy analysis as follows:

Section 2 of the *Planning Act*

[30] Both Mr. Ferrari and Mr. Ramsay agreed that the OPA No. 193 and ZBLA No. 23-224 have regard to matters of provincial interest, and both noted, *inter alia*, the relevant applicable subsections:

- (f) The efficient use of infrastructure and municipal services and that the proposal includes holding provisions within the ZBLA;

- (h) Considers orderly development of healthy and safe communities. The change in land use will result in public infrastructure improvement in the form of urbanizing Old Gold Links Road;
- (p) Considers the appropriate location of growth and development. The Subject Lands are within the existing urban boundary and within the periphery of a neighbourhood node. The property is vacant and ideal for development; and;
- (r) Appropriate built form. The building is in keeping with the general scale of the neighbourhood and designed in an efficient manner given the various site constraints that exist.

[31] It was the opinion of Mr. Ramsay that the OPA 193 and ZBLA 23-224 are consistent with and implement the policies as the proposed Mixed Use-Medium Density designation and the C5 Zone will facilitate an efficient development and land use pattern allowing intensive office, residential, commercial, and other land uses, including nearby transit services. However, he testified the proposal for an SSW can be categorized as a less intensive use that generate lower volumes of vehicular and pedestrian traffic, and typically does not support transit. It was his opinion that the SSW is not appropriate for a mixed-use area.

Provincial Policy Statement, 2020

Mr. Ferrari

[32] Mr. Ferrari and Mr. Ramsay reviewed and evaluated the proposal against applicable policies within the PPS including Building Strong Healthy Communities, Managing and Directing Land Use to Achieve efficient and Resilient Development and Land Use Patterns, Settlement Areas focussing on growth and development, Land Use Compatibility, Employment Opportunities, Transportation Systems and Sewage, Water and Stormwater Services.

[33] Mr. Ferrari noted the proposal represents an efficient development pattern, utilizing existing vacant land within a neighbourhood of commercial uses near an established commercial shopping corridor, which would promote economic growth and development. He testified the site will be fully serviced at the cost of the Applicant.

[34] Testifying to policies directed at transportation and infrastructure corridors, he opined all development adjacent to these corridors shall be compatible with and supportive of the corridors and designed to mitigate any negative impacts.

[35] He opined the proposed building has been located outside the Hydro One Easement and within the easement, the only proposed use is surface parking which is permitted. However, he further noted, at the site plan stage, detailed development plans will need to be approved to Hydro One's satisfaction.

Mr. Ramsay

[36] Mr. Ramsay referred to policies under Section 1.1.1. (a), (b) and (e) which direct healthy, liveable and safe communities, accommodating appropriate affordable and market-based range and mix of residential types, employment, and other long-term needs that further promote the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns and standards to minimize land consumption and servicing costs.

[37] It is his opinion that OPA 193 and ZBLA 23-224 are consistent with and implement the above noted policies as the proposed Mixed Use-Medium Density designation and C5 Zone will facilitate an efficient development and land use pattern. However, the proposal for an SSW as an additional permitted use will not result in intensive use of land, infrastructure, and public service facilities. He submitted standalone SSW facilities are not appropriate in mixed-use areas.

[38] Opining on Settlement Areas focussing on growth and development, Mr. Ramsay referred to Section 1.1.3.1 ,1.1.3.2, 1.1.3.3 as being consistent with the Settlement Area policies of the PPS. However, an SSW is not consistent with the PPS as it is not an intensive land use and will not result in efficient use of land, infrastructure, and public service facilities.

[39] Addressing Long-term Economic Prosperity, Mr. Ramsay testified that the approved amendments are consistent with s. 1.7.1. The proposed Mixed Use – Medium Density and C5 Zone will provide opportunities for economic development on the Subject Lands, whereas the proposal for an SSW is a low intensity industrial use and will not contribute to the supply of housing opportunities in the community optimizing the long-term availability and use of land, resources, infrastructure, and public service facilities.

[40] Overall, addressing the PPS in its entirety, the opinion of Mr. Ramsay that OPA 193 and ZBLA 23-224 are consistent with the PPS but the request to permit an SSW is not consistent with Sections 1.1.1, 1.1.3.2, 1.1.3.3 and 1.7.1 c) of the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)

Mr. Ferrari

[41] Mr. Ferrari relied on Schedule C of the Growth Plan, which identifies the Subject Lands as being within the Built Boundary and speaks to directing growth within settlement areas and the provision for existing municipal water and wastewater systems. He reiterated the Subject Property will be fully serviced with municipal services.

[42] Testifying to Policies 2.2.1, 2.2.5, and 2.2.5.2 which deal with Employment Uses and Employment Areas, it is his opinion the proposed use will provide limited employment. However, the proposed development will make efficient use of vacant land in an appropriate location close to the expressway interchanges and provide opportunity to rezone an otherwise vacant parcel of land to a tax-producing land use for the City.

[43] Regarding infrastructure to support growth, Mr. Ferrari referred to Policies 3.2.1.2, 3.2.5.1, 3.2.6.1, 3.2.6.2, and 3.2.7.2 dealing with long-range scenario-based land use planning, holding provisions to address integration of infrastructure and planning, provision of water and wastewater systems and Stormwater Management Plans all of which is contemplated in the proposed development.

[44] Regarding policies that relate to agriculture, natural heritage, and aggregate resources he referred to Subsection 4.2.7, wherein a Stage 1-2 Archeological Assessment was prepared, and no archeological resources were found on the Subject Property and no existing or proposed human-made or natural hazards exist in proximity to or on the Subject Property.

Mr. Ramsay

[45] Mr. Ramsay testified that the proposed Mixed Use-Medium Density designation and C5 Zone support the principles enunciated in Sections 1.2, which focus on building complete communities, prioritizing intensification and provide higher intensity mixed use development on the site.

[46] Mr. Ramsay opined the proposed Mixed Use-Medium Density designation and C5 Zone generally conforms with the Policies found at Sections 1.2.1, which focus on building complete communities and Sections 2.2.1.2 focusing on growth within settlement areas that support diverse land uses, public service facilities, provide a diverse range and mix of housing options, expand access to a range of transportation options, an appropriate supply of safe and publicly-accessible open spaces, provide for a compact built form and vibrant public realm and integrate green infrastructure and appropriate low impact development.

[47] It was Mr. Ramsay's evidence that the approved amendments conform with the policies of the Growth Plan. However, with respect to the proposed SSW as an additional permitted use, it was his opinion that the requested amendments to the OP and ZBL do not conform as the lower intensity nature of the SSW is not appropriate in an area intended for a compact built form and vibrant public realm and is not transit supportive land use.

Urban Hamilton Official Plan

Mr. Ferrari

[48] Mr. Ferrari described that the Subject Property is located on the periphery of an identified Community Node which speaks to permitted policies within the Community Node including housing, employment, services, recreation, built form and providing commercial services to residents within the Node and to surrounding neighbourhoods.

[49] It is his opinion the proposed SSW, is located far from any sensitive land uses and the proposed use provides a function that contributes to the vitality of the Community Node. The proposed built form is a five-storey commercial development making it compatible to other Community Nodes where built form is generally low-rise and medium-rise buildings. It was Mr. Ferrari's opinion that an SSW is a form of service commercial use and because the site is within an urban node, the use is permitted. Further, a Development Agreement will be entered with the City to extend services as well as upgrade existing right-of-way to urban standards including street lighting and sidewalks.

[50] Mr. Ferrari referred to Urban Design policies contained in Section B.3.3.1, 3.3.1.5, B.3.3.1.6, B.3.3.1.8 that identify general urban design goals and compatibility with the character of the existing environment and policies addressing reducing greenhouse gas emissions, street scape design and landscaped, screened surface parking lots. He testified the overall development is in keeping with the existing and planned development on Old Golf Links Road as the adjoining property, a dormant outstanding application, is planned for a six-storey building and there is an existing three-storey office building to the west; that the proposal achieves a reduction of greenhouse gas emissions by tree plantings and incorporating solar panels and/or geothermal systems which will be implemented at the Site Plan stage. An External Works Agreement will address sidewalks into the overall design. He indicated there will be no discernible impacts on neighbouring properties from sun/shadow or overlook perspective.

[51] Mr. Ferrari testified that a Functional Roadway design has been provided to the City for review. The detailed design will take place at the Site Plan stage and a Holding Provision will be applied to the Subject Property for the purposes of entering into an External Works Agreement with the City to ensure the local road, Old Golf Links Road, is upgraded prior to any redevelopment taking place.

[52] Mr. Ferrari further testified Transportation Staff at the City concur with the findings of the Transportation Impact Study that has been prepared showing no traffic issues are anticipated to result from this proposed redevelopment.

[53] Mr. Ferrari further testified that a comprehensive Functional Servicing Report has been prepared with detailed servicing plans for how Old Golf Links Road will be urbanized and services extended throughout the Subject Property. The City Planning Committee Staff Report indicates the City is “generally satisfied” with the proposed design and at the Site Plan stage, detailed plans will be prepared, and an External Works Agreement will be entered into to ensure that the services are installed in accordance with municipal standards.

[54] Mr. Ferrari opines Policy F.1.1.5 considers amendments to the Plan in which the City shall have regard to the impact that the proposed amendment will have on the City’s vision, objectives and policies established within the Plan and the City’s community as a whole relating to environment, economic and public administration. Given that the proposed development is a compact urban form that provides a service to surrounding neighbourhoods that is not found within eight kilometres of the Subject Property, is located in proximity to the LINC and Highway 403, the proposal represents a desirable built form that is consistent with existing and planned buildings in the immediate vicinity. He indicated the proposal is not perceived to result in a negative impact to the community, environment, or the local economy.

Mr. Ramsay

[55] Mr. Ramsay testified that the Subject Property is shown on various UHOP schedules and maps as being located within Community Node policies that allow for access to residential intensification, strong pedestrian focus with a broad mix of uses, employment, services, retail stores and recreation in close proximity to each other and transit. He set out the policies found in Section E.2.3.3.11 that directs detailed secondary plans to establish boundaries that provide a mix of uses, heights, densities, built form, and design.

[56] When testifying with regard to Mixed Use Density Designation, Mr. Ramsay referred to Section E.4.6.1 to E.4.6.4. It was his opinion that the Approved Amendments and the Proposed Mixed Use – Medium Density designation and C5 Zone permit a range, mix of commercial uses, and provide day-to-day retail facilities and services in the immediate area. The Approved Amendments will also enable the area to evolve over time as a compact mixed use “people place” where people can live, work and shop.

[57] It was his opinion the request to add an SSW facility as a permitted use does not conform with the direction of the Mixed Use-Medium Density to create vibrant mixed-use area or serve the surrounding area. And further, it is his opinion that the low intensity nature of the proposed SSW will not support the evolution of the area where people can live, work, and shop.

[58] Mr. Ramsay further indicates the Approved Amendments conform with design requirement policies set out in Section E.4.6.16 to E.4.6.23. The Proposed Mixed Use – Medium Density designation and C5 Zone permit uses and establishes performance standards aimed at creating urban form with a streetscape design and building arrangement that stimulates pedestrian use. However, to add an SSW as a permitted use does not conform with the design requirements even though its location will be close to the street and the nature of the use does not result in increasing pedestrian traffic.

[59] When outlining “permitted uses” on lands designated Mixed Use-Medium Density he indicated the proposed SSW is not among the permitted uses listed in Section 4.4.6.5, which include *inter alia* retail stores, medical clinics, offices, restaurants, gas bars, artist studios, drive-through facilities, institutional uses, and arts, cultural, entertainment, hotels, and accessory uses.

[60] Lastly, Mr. Ramsay testified Section B.3 of the UHOP provides goals, general principles, and policies for urban design to create pedestrian oriented places that are safe, accessible, connected, and easy to navigate for people with all abilities. It was his opinion that the Approved Amendments conform with these goals.

[61] Further, he opined the SSW proposal does not support the existing character, development pattern, built form or landscape of the lands within the surrounding area and is not well-integrated with the character of the other lands in the Community Node designated as Mixed Use – Medium Density as it facilitates a lower intensity use that is not transit supportive or pedestrian oriented.

[62] Overall, it was Mr. Ramsay’s opinion that the proposed development is not in conformity with the policies of UHOP dealing with Urban Structure and Community Nodes, Mixed Use – Medium Density and Urban Design.

Meadowlands Mixed Use Secondary Plan Area

Mr. Ferrari

[63] Mr. Ferrari referenced Policies 2.4.2 relating to objectives for safe and convenient pedestrian activity, the form and placement of buildings and walkable connections to neighbouring uses, use of landscaping, streetscaping and automobile movement and parking in an aesthetically pleasing, efficient and safe manner. He indicated at the Site Plan stage, and with the use of Holding Provisions, further detailed design will be undertaken to ensure that these performance standards are built to the satisfaction of the

City and conform to the Meadowlands Mixed Use Secondary Plan.

[64] He cited Policy B.2.4.5 Mixed Use-Medium Density Designation (c), (i), (iv), (v), (vi) and (vii). More specifically, he referenced:

- (i) The primary uses shall be non-retail commercial uses serving a broad community and regional market such as professional and business offices, hotels/motels, and restaurants. These uses can take advantage of excellent regional accessibility afforded by their proximity to the Lincoln Alexander Parkway and Highway 403.

Mr. Ramsay

[65] Mr. Ramsay reviewed the Map Schedule and Goals of Objectives wherein the Subject Property is designated “General Open Space.” He opined that the goal of Section 2.4.1 is to develop a complementary and environmentally sensitive mixture of primarily residential and commercial uses and institutional or recreational activities in low-rise buildings. He further referred to Section 2.4.2 e) of the Plan is to allow for convenient access to transit, and to accommodate planned bicycle routes established by the City.

[66] Regarding 2.4.5.1 Mixed Use-Medium Density, Mr. Ramsay referenced Policy exceptions in the immediate vicinity of the Subject Property including non-retail commercial uses, business offices, hotels/motels, and restaurants. Specifically, he referred to Site Specific Policy Area B found at Section 2.4.12.2 – “located adjacent to property owned by Hydro One the precise land use designation and zoning will be determined on a site-specific basis when a development application is received for these lands.”

[67] It was Mr. Ramsay’s opinion that the policy exceptions on the abutting and nearby lands support the proposed Mixed Use-Medium Density designation on the Subject Property. However, he testified a more intensive, commercial, and residential development of the surrounding area will further contribute to the creation of a vibrant, pedestrian and transit supportive development node. In contrast, it is Mr. Ramsay’s

opinion the lower intensity SSW will neither complement nor support surrounding development.

City Zoning By-law No. 05-200 and Former Town of Ancaster Zoning By-law No. 87-57

Mr. Ferrari

[68] The current ZBL permits a Public Utility or a park. The proposed ZBLA would have the effect of permitting various commercial uses in addition to the proposed Self-Storage Facility. The Commercial and Mixed Use (C5) Zone does not permit an SSW facility. He indicated Exception No. 318 permits a Warehouse Use in the C5 Zone. Mr. Ferrari testified there are multiple existing exceptions within the Commercial Zones that do permit such a use. For example, he referred to the District Commercial (C6) Zone, Exception 326 and 336 as well as Arterial Commercial (C7) Zone. Self-storage use is contemplated within commercial zones and as stated, warehouse uses are permitted within commercial and mixed use (C5) Zones.

[69] In Mr. Ferrari's opinion, an SSW is a form of Service Commercial Use, and it is logical that an SSW be located in an area with good access, which is close enough to residential neighbourhoods while not being so close as to create an issue with respect to neighbourhood incompatibility.

[70] Speaking to setbacks he noted, a 1.0 m setback is proposed for the rear property line. City Staff notes there are no inherent grading issues stemming from the reduced setback and Planning Staff approved this amendment.

[71] The proposal is requesting a provision for a maximum height of 18.8 m, whereas 14 m is permitted. There are no sensitive land uses or residential properties being impacted by the proposed increase. It is acknowledged that Planning Staff approved this amendment.

[72] Within a C5 Zone, a building entrance is required to face a street. A site-specific provision is requested for the principal entrance to face west as it has a sidewalk. It is intended to provide a safe and pedestrian-oriented streetscape with a 3 m wide planting area for both trees and shrubs. It is also acknowledged that the Planning Staff approved this amendment.

[73] Mr. Ferrari contends that Holding Provisions with conditions are appropriate to facilitate the development. As indicated previously, they include a Functional Servicing Report, Stormwater Management Report, Watermain Hydraulic Analysis, An External Works Agreement, Acoustics Report, Tree Protection Plan, and a Hydro One Agreement.

[74] He concluded his evidence in-chief by indicating the proposal is consistent with the PPS and is in conformity with the Growth Plan. The OPA meets the intent and purpose of the UHOP and the proposed ZBLA will conform to the UHOP upon adoption of the OPA. The Subject Lands are an appropriate location for the proposed use and represents good planning.

[75] Mr. Krysiak limited his cross-examination to questions dealing with sidewalks, distance to travel by people who live in the periphery, which implies vehicular traffic, encumbered to permanent structures/residential uses and exceptions in the ZBL that deal with self-storage facilities. Mr. Ferrari concurred with Mr. Krysiak that consideration must be given by planning staff where exceptions are permitted as part of valid planning reasons.

Mr. Ramsay

[76] Mr. Ramsay provided planning comments on the City Zoning By-law and former Town of Ancaster ("Former Town") Zoning By-law. He summarized the standard regulations of the C5 Zone, the exceptions proposed in ZBLA 23-224, and the additional exceptions requested by the Applicant. He testified, "the C5 Zone is found along collector and arterial roads where the zone permits a range of retail, service, commercial...uses.

Although residential uses are permitted, either as a single or mixed-use building, this zone is predominantly commercial.”

[77] Mr. Ramsay testified the “ZBLA 05-200 defines SSW facility is considered a warehouse which is defined as:

...the use of building or structure, or part thereof for the bulk storage or distribution of goods to industrial, commercial, or institutional business users....but shall not include the retailing of goods to the general public. A Warehouse may include a Mini Storage Facility but shall not include a Waste Management Facility....

[78] He testified Warehouses including SSW are not permitted in Mixed-Use Zones or, in the remaining Commercial Zones.

[79] Commenting on the previous evidence heard, Mr. Ramsay, in cross-examination, conceded a number of points. He indicated that any development on the Subject Property would benefit the province and the City and optimizes the use of the land, and that the proposal contributes to the range and mix of uses in the area (although not in the context of transit supportive and active transportation).

[80] He further testified the proposal will offer a commerce service to the general public and that self storage uses are permitted in the major commercial areas of Upper James and Rymal Road in the City by exception to the by-law and zoned C5, the same zone proposed for the Subject Property.

[81] He further acknowledged that not every location where development is going to occur in the municipality is transit supported such as a car wash or gas bar. He agrees and has no issue that the objective of the policy indicates “allows for convenient access to transit” and that Old Golf Links Road is well-served by transit and provides for automobile movement and parking that is aesthetically pleasing. He agreed that local roads are expected to accommodate the lowest amount of traffic. He criticized the proposal is not contributing to a sense of place but will function as an isolating land use but confirmed the

site has an expressway to the north and the eastern half is encumbered with a Hydro Easement and natural features to the south making it undevelopable. He opined the site itself was isolated and sits on a dead-end road that will never be extended but speculated if there was a future hotel to be developed on the abutting site, then the Subject Property would not be isolated.

[82] It is the opinion of Mr. Ramsay and as stated throughout his evidence that the request to include a site specific policy in OPA No. 193 and site specific zoning exception in ZBLA No. 220-224 to permit a SSW use and allow a maximum building height of five-storeys does not have regard to matters of Provincial Interest as set out in s. 2 of the *Planning Act*, is not consistent with the PPS; does not conform with the Growth Plan; does not conform with the UHOP and does not represent good planning and is not in the public interest.

Mr. Ferrari (Reply Statement)

[83] There was an agreement between the Parties, in advance of the Merit Hearing, there would be a chance to provide a written Reply Statement. Mr. Ramsay declined the opportunity.

[84] Mr. Ferrari provided a brief written Reply Statement to Mr. Ramsay's Witness Statement regarding the use, which is not intense enough for the Subject Property, and the use is not transit supportive. Regarding the intensity of the lot coverage, Mr. Ferrari testified the building covers approximately 66% of the buildable area on site after considering the Hydro One Easement restriction and the proposed reductions to the side and rear yard setbacks.

[85] Mr. Ferrari questioned Mr. Ramsay's list of Commercial Mixed Uses within the C5 Zone (such as Catering, Microbrewery, Gas Bar, Car Wash, Repair Service...) to be transit supportive or intensive uses yet they are permitted on lands zoned C5.

[86] Further, regarding Mr. Ramsay's chart denoting several SSW in the City, Mr. Ferrari noted there are SSW constructed and operating within Commercial and Neighbourhood designations zoned C5, the same zoning proposed for the Subject Property.

ANALYSIS AND FINDINGS

[87] The Tribunal finds that the planners are *ad idem* that the OPA and ZBLA are appropriate and should be approved. The sole difference rested with the City's belief that SSW use should not be permitted.

[88] Based on all the evidence before the Tribunal, the Tribunal finds it prefers the planning evidence of Mr. Ferrari and Mr. Loiacono in deciding this matter. Although the parties were at odds, except for minor anomalies, Mr. Ramsay was agreeable on key issues that were posed to him by Counsel for the Applicant in cross-examination.

[89] Having considered all the written and oral evidence and for all the above-summarized reasons, the Tribunal finds the Appeal.

Has regard to matters of provincial interest as set out in s. 2 of the *Planning Act*

[90] The numerous proposed Holding Provisions with a series of conditions to be applied to the Subject Property at a Site Plan Stage and throughout the development process will achieve an orderly phased development and ensure that servicing and design criteria have been met.

Are consistent with the Provincial Policy Statement, 2020

[91] The proposed development represents efficient development pattern utilizing existing vacant land within a neighbourhood of commercial uses promoting economic growth and development.

Conforms with the Growth Plan for the Greater Golden Horseshoe, 2019

[92] The proposed development provides an opportunity to rezone an otherwise vacant parcel of land to a tax-producing use in the City. The proposed development supports green infrastructure using solar panels and geothermal services with no discernible impact on neighbouring properties. The proposal is compatible with low-rise and medium-rise buildings currently and anticipated on Old Golf Links Road. The proposed development also is appropriate for the distribution of commercial uses as there is no similar SSW use within eight kilometres of the proposed development.

Conforms with the UHOP

[93] The proposed development is compatible with the character of the existing environment as the building form and massing do not impact any adjacent properties, the adjoining property is planned for a six-storey building and there is an existing three-storey office building further to the west. The proposed use provides a service for surrounding neighbourhoods not otherwise found within the existing Community Node.

Conforms with the Meadowlands Mixed Use Secondary Plan

[94] The redesignation to Mixed Use-Medium Designation allows primary uses shall be non-retail commercial uses serving a broad community such as business offices, hotels/motels, and restaurants. These uses can be achieved by the regional accessibility afforded by their proximity to the LINC and Highway 403.

City Zoning By-law No. 05-200 and Former Town Zoning By-law No. 87-57

[95] The proposed ZBLA would permit a commercial use similar to other commercial zones within the City with exceptions that do permit the use.

Represents good planning

[96] Overall, the proposed use will allow for the urbanization of Old Golf Links Road, an organized efficient use of a vacant property in an energy-efficient building and promotes economic growth.

ORDER

[97] **THE TRIBUNAL ORDERS that:**

1. The appeal is allowed and the proposed Official Plan Amendment No. 193 (“OPA 193”) for the City of Hamilton to redesignate the lands from “Open Space” and “General Open Space” to “Mixed Use Medium Density” as set out in OPA 193 and Zoning By-law Amendment No. 23-224 (“ZBLA 23-224”) is approved.
2. **AND FURTHER**, the appeal is allowed to include a site-specific zoning exception in ZBLA 23-224 to permit a warehouse (self storage) use and allow a maximum building height of five-storeys is approved.

“Jackie Denyes”

JACKIE DENYES
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.