

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 08, 2021

CASE NO(S): PL190324

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

Appellant:	The Governing Council of the University of Toronto
Appellant:	2692201 Ontario Inc.
Appellant:	KingSett Capital Inc.
Appellant:	Knightstone Capital Management Inc
Appellant:	462226 Ontario Inc.
Subject:	Proposed Official Plan Amendment No. OPA 453
Municipality:	City of Toronto
OLT Case No.:	PL190324
OLT File No.:	PL190324
OLT Case Name:	2692201 Ontario Inc. v. Toronto (City)

Heard: October 25, 2021 by video hearing

APPEARANCES:

Parties

Counsel

City of Toronto	Jason Davidson
462226 Ontario Inc.	Lee English
2692201 Ontario Inc.	David Neligan (for Eileen Costello)
Whitewall Property Corporation	David Bronskill
The Governing Council of the University of Toronto	Marisa Keating
Joseph Da Silva	Victoria Peter

**MEMORANDUM OF ORAL DECISION DELIVERED BY JATINDER BHULLAR ON
OCTOBER 25, 2021 AND ORDER OF THE TRIBUNAL**

PREAMBLE

[A] This is a corrected Memorandum of Oral Decision and Order replacing a Memorandum of Oral Decision and Order previously issued by the Tribunal on November 8, 2021. This decision modifies and corrects the Decision issued on November 8, 2021: by addressing matters relating to Whitewall Property Corporation, the owner of property known municipally as 9 Albany Avenue in the City of Toronto (“Whitewall”) which were inadvertently omitted from the Decision; and by adding additional paragraphs inadvertently omitted from the Order.

[B] The corrections align the written decision with the oral decision rendered by the Tribunal on October 25, 2021 in accordance with the joint request of the parties which included the request relating to the addition of Whitewall Property Corporation as a party, specifically sheltering under the appeals by 462226 Ontario Limited and 2692201 Ontario Inc, and the withholding of the Final Order, as it is to apply to 9 Albany Avenue, contingent upon confirmation to the Tribunal of agreed-upon pre-requisites.

CMC AND SETTLEMENT HEARING

[1] This was the second Case Management Conference (“CMC”) with respect to the various appeals against City of Toronto Official Plan Amendment No. 453 (“OPA 453”).

[2] The parties informed the Tribunal prior to the CMC that they have made progress. The City and the Governing Council of the University of Toronto (“UoT”) have reached a settlement. The remaining Appellants consented and have scoped their appeals to be site-specific versus city-wide appeals of OPA 453.

OPA 453

[3] OPA 453 was adopted by City of Toronto (the “City”) Council by enactment of By-law No. 986-2019 at its meeting on June 19, 2019. OPA 453 introduces policy into the City Official Plan (“OP”) under the Housing Policies in s. 3.2.1 of the OP.

[4] OPA 453 introduces a definition for “dwelling room”, meaning a room used as living accommodation that is available for rent and that is not self-contained. A dwelling room may contain private sanitary facilities or cooking facilities, but not both.

[5] The new policies deal with the obligation to replace existing dwelling room floor area in new development where certain specified conditions as set out in the policy pertain. The new policy also goes on to address an acceptable tenant relocation and assistance plan to lessen hardship for existing tenants.

PRELIMINARY MATTERS

[6] As a follow-up from the first CMC, Whitewall Property Corporation (“Whitewall”) requested party status and all parties consented. Whitewall informed the Tribunal that they have a property located at 9 Albany Avenue in the City. Whitewall submitted that they are seeking party status to partake and assist the Tribunal in this matter under Rule 8.3 of the Tribunal’s Rules of Practice and Procedure (the “Rules”). Namely;

8.3 Non-Appellant Party A party to a proceeding before the Tribunal which arises under any of subsections 17(24) or (36), 34(19) or 51(39) of the Planning Act who is not an appellant of the municipal decision or enactment may not raise or introduce a new issue in the proceeding. The non-appellant party may only participate in these appeals of municipal decisions by sheltering under an issue raised in an appeal by an appellant party and may participate fully in the proceeding to the extent that the issue remains in dispute. A non-appellant party has no independent status to continue an appeal should that appeal be withdrawn by an appellant party.

[7] The Tribunal is satisfied that it is appropriate to grant party status to Whitewall to enable the Tribunal to adjudicate effectively and completely on the issues that will

remain. The Tribunal accordingly will grant party status to Whitewall as a Non-Appellant Party specifically to shelter under the issues of the remaining Appellants 462226 Ontario Limited and 2692201 Ontario Inc in accordance with Rule 8.3 of the Tribunal's *Rules of Practice and Procedure*. Upon the submissions of the Parties as to the continuing interests of 462226 Ontario Limited and 2692201 Ontario Inc. and Whitewall, as it shelters under their Appeals, in ongoing site-specific issues relating to 9 Albany Avenue, the Tribunal is satisfied that it is appropriate to withhold the Order, as it would apply to the property at 9 Albany Avenue, until the earlier of the two resolutions referred to in the Order herein.

[8] Whereas the first CMC envisaged possible review of additional participants to be considered for granting of participant status, no submissions were received for granting of such status and no additional participants were granted status.

OPA 453 SETTLEMENT AND APPROVAL

[9] The City submitted a sworn Affidavit from Deanna Chorney in support of the settlement. Ms. Chorney was qualified by the Tribunal to provide expert opinion evidence in the area of land use planning.

[10] Ms. Chorney informed the Tribunal that OPA 453 provides clarification of the definition for a "Dwelling Room" vis-a-vis student residences. The revised definition states;

"Dwelling room means a room used as living accommodation that is available for rent and that is not self-contained. A dwelling room may contain private sanitary facilities or cooking facilities, but not both. A dwelling room, for the purposes of this policy, excludes living accommodation exempted from the application of the Residential Tenancies Act, or successor legislation.

[11] Ms. Chorney further opined that OPA 453 has regard for matters of provincial interest by providing for a range of housing options including affordable housing as identified in s. 2(j) of the Act.

[12] Ms. Chorney also opined that OPA 453 is consistent with the Provincial Policy Statement 2020 (“PPS 2020”) and as well, conforms to the Growth Plan for the Greater Golden Horseshoe 2020 (the “Growth Plan”) in similar fashion by providing housing of mixed choices that is inclusive of affordable housing options.

[13] Ms. Chorney stated that OPA 453 maintains the intent and purpose of the City’s Official Plan and specifically Section 3.2.1 Housing, through the policy of maintaining affordable housing choices in the City and replenishing where such opportunities exist in new developments.

[14] The Tribunal, based on consent and submissions of all the parties; the unopposed and uncontroverted expert opinion evidence of Ms. Chorney finds that OPA 453, as amended, has regard for matters of provincial interest, is consistent with PPS 2020, conforms with the Growth Plan and maintains the general intent and purpose of the City’s Official Plan. This Tribunal finding does not apply to matters of two site specific appeals that continue for lands municipally known as 295 Jarvis Street, Toronto; and 935 Queen Street West, Toronto and the Tribunal confirms that the policies of Revised OPA 453 are in full force and effect, with the exception only as they apply to these lands which are the subject of the two site-specific appeals.

[15] The City requested that the Tribunal render an oral decision if appropriate. The Tribunal provided an oral decision at the conclusion of the CMC approving the amended OPA 453 as presented and now appended as Attachment 1 to this decision and order.

[16] The Tribunal also reviewed plans to resolve the remaining two site specific appeals in this matter. The parties submitted that much would depend upon the processing of development plans for the two excerpted properties and that work is underway in this regard. Based on submissions of the parties the City is directed to provide an update to the Tribunal by **Monday, April 25, 2022**.

ORDER

[17] The appeal of The Governing Council of the University of Toronto is allowed in part and Amendment No. 453 to the Toronto Official Plan, attached as Attachment 1 to this Order, is approved and is in full force and effect as of the date of October 25, 2021 except for the lands municipally known as 295 Jarvis Street, Toronto and 935 Queen Street West, Toronto for which site-specific appeals with respect to Amendment No. 453 to the Toronto Official Plan continue.

[18] Whitewall Property Corporation is added as a Party to this proceeding, sheltered under the appeals by 462226 Ontario Limited and 2692201 Ontario Inc.

[19] This Order is withheld as it applies to the property at 9 Albany Avenue until the Parties confirm to the Tribunal that the earlier of the following has occurred:

The appeals by 462226 Ontario Limited and 2692201 Ontario Inc. are resolved, either by disposition by the Tribunal, settlement or withdrawal,

or

Whitewall Property Corporation's party-status interest is resolved.

[20] In the event matters arise related to the implementation of this Order, the Tribunal may be spoken to in accordance with the Tribunal's *Rules of Practice and Procedure* or as otherwise agreed by the Parties.

“Jatinder Bhullar”

JATINDER BHULLAR
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.

ATTACHMENT 1

AMENDMENT 453 TO THE OFFICIAL PLAN

The Official Plan of the City of Toronto is amended as follows:

1. Section 3.2.1 Housing, is amended by adding the following policy as a new Policy 11:

"New development in areas where dwelling rooms, such as those in rooming houses, are permitted that would have the effect of removing all or part of a private building or related group of buildings, and would result in the loss of six or more dwelling rooms will not be approved unless:

 - a. all of the dwelling rooms have rents that exceed dwelling room tier 2 mid-range rents at the time of application, or
 - b. in cases where planning approvals other than site plan are sought, the following are secured:
 - i. at least the same amount of residential gross floor area is replaced and maintained as dwelling rooms or rental bachelor units;
 - ii. any available replacement housing not occupied by returning tenants will be offered to eligible households, as approved by Council;
 - iii. for a period of at least 15 years, the rents for replacement dwelling rooms and replacement rental bachelor units will be similar to the dwelling room rents in effect at the time the development application is made, or at Dwelling room tier 1 or tier 2 affordable rent or dwelling room tier 1 or tier 2 mid-range rent as applicable based on the dwelling room rents in effect at the time the development application is made if there is no returning tenant, with the rent at first occupancy increased annually by not more than the Provincial Rent Increase Guideline or a similar guideline as Council may approve from time to time; and
 - vi. an acceptable tenant relocation and assistance plan addressing the right to return to occupy the replacement housing at similar rents, the provision of alternative accommodation at similar rents, and other assistance to lessen hardship.
 - c. Notwithstanding policies b.i and b.iii, the City will seek opportunities to secure the provision of additional replacement rental dwelling rooms or replacement rental units to achieve at least the same number of existing dwelling rooms lost and to secure rents for replacement housing for a period of at least 49 years; or
 - d. in Council's opinion, the supply and availability of low-end of market rental housing in the City has returned to a healthy state and is able to meet the housing requirements of current and future residents. This decision will be based on a number of factors, including whether:
 - i. low-end of market rental housing in the City is showing positive, sustained improvement as demonstrated by significant net gains in the supply of low-end of market rental housing including significant levels of

production of low-end of market rental housing, and continued projected net gains in the supply of low-end of market rental housing;

- ii. the overall rental apartment vacancy rate for the City of Toronto, as reported by the Canada Mortgage and Housing Corporation, has been at or above 3.0 per cent for the preceding four consecutive annual surveys;
 - iii. the proposal may negatively affect the supply or availability of dwelling rooms or rental housing sub-sectors including affordable units, units suitable for families, or housing for vulnerable populations such as seniors, persons with special needs, or students, either in the City, or in a geographic sub-area or a neighbourhood of the City; and
 - iv. all provisions of other applicable legislation and policies have been satisfied."
2. Section 3.2.1 Housing, is amended by adding the following policy as a new Policy 12:

"New development that would have the effect of removing all or part of a private building or related group of buildings, and would result in the loss of one or more rental units or dwelling rooms will not be approved unless an acceptable tenant relocation and assistance plan is provided to lessen hardship for existing tenants."

3. Section 3.2.1 Housing, is amended by adding the following as "Housing Definitions":

"Dwelling room means a room used as living accommodation that is available for rent and that is not self-contained. A dwelling room may contain private sanitary facilities or cooking facilities, but not both. A dwelling room, for the purposes of this policy, excludes living accommodation exempted from the application of the *Residential Tenancies Act*, or successor legislation.

Dwelling room tier 1 affordable rents means rent that is 60 percent or lower of the average City of Toronto rent for a bachelor unit, as reported annually by the Canada Mortgage and Housing Corporation.

Dwelling room tier 2 affordable rents means rent that is between 61 percent and 80 percent of the average City of Toronto rent for a bachelor unit, as reported annually by the Canada Mortgage and Housing Corporation.

Dwelling room tier 1 mid-range rents means rent that is between 81 percent and 100 percent of the average City of Toronto rent for a bachelor unit, as reported annually by the Canada Mortgage and Housing Corporation.

Dwelling room tier 2 mid-range rents means rent that is between 101 percent and 120 percent of the average City of Toronto rent for a bachelor unit, as reported annually by the Canada Mortgage and Housing Corporation."