

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** January 25, 2017

**CASE NO(S):** PL160641

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

Appellant:	1486563 Ontario Inc.
Appellant:	Empire Communities (St. George) Ltd.
Appellant:	Walton Development and Management LP
Subject:	By-law No. 61-16
Municipality:	County of Brant
OMB Case No.:	PL160641
OMB File No.:	PL160641
OMB Case Name:	Empire Communities (St. George) Ltd. v. Brant (County)

**Heard:** January 4, 2017 in Brant, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

County of Brant

Nancy Smith

1486563 Ontario Inc.

David Nelligan  
Steven Zakem (*in absentia*)  
Andrea Skinner (*in absentia*)

Empire Communities (St. George) Ltd.

Paul DeMelo

Walton Development and  
Management LP

Tara Piurko (*in absentia*)

Lasani Homes (1998) Ltd.

Jennifer Meader

Riverview Highland St. George  
Holdings

J. A. Hitchon

Brant Star Developments Ltd.

J. A. Hitchon

## **DECISION OF THE BOARD DELIVERED BY J. V. ZUIDEMA**

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### **INTRODUCTION**

[1] A first Pre-Hearing Conference (“PHC”) was held with respect to this matter. The Board’s file provides some background on the matter. In summary, the purpose of the County of Brant (“County”) By-Law No. 61-16 (“ZBA 61-16”) introduced textual changes and new schedules to the County’s Comprehensive Zoning By-law in order to implement the polices contained in the County’s new Official Plan which was adopted by Council on or about September 7, 2010. The Comprehensive ZBA 61-16 is to replace the existing Comprehensive Zoning By-Law 110-01.

[2] The appellants to this Zoning By-Law were 1486563 Ontario Inc. (“148”), Walton Development and Management LP (“Walton”), and Empire Communities (St. George) Ltd. (“Empire”).

[3] The Board’s file reveals that the reasons for appeal of these three appellants are as follows:

[4] 148: It had earlier applied to amend the County’s Comprehensive Zoning By-Law 110-01 and Draft Plan of Subdivision to facilitate the development of a residential subdivision for lands at 836 Watts Pond Road. It had subsequently appealed those instruments pursuant to ss. 34(11) and ss. 51(34) of the *Planning Act* and those appeals were scheduled for a hearing on or about August 30, 2016 (OMB Case No. PL160014).

[5] The appeal in this instant is so that the new Comprehensive Zoning By-Law 61-16 can be amended to harmonize with the outcome of that earlier hearing.

[6] Empire: It had appealed the entirety of the Comprehensive Zoning By-Law but was particularly concerned with the exclusion of residential uses from lands zoned for mixed use, as well as the introduction of new zoning standards which, it argued would have an impact on its proposed development application.

[7] Empire has filed applications for an official plan amendment application, a zoning by-law amendment and a draft plan of subdivision to permit Empire's proposed development.

[8] Walton: It has filed applications for a zoning by-law amendment and a draft plan of subdivision for its property known as Tutela Heights Riverbend. It also had appealed the entirety of the by-law as it applies, or should apply to the Walton's lands stating that the proposed by-law should be amended in order to reflect its applications which are currently on file and in process with the County.

[9] By the time this first PHC was scheduled, the County, as represented by its counsel, Ms. Smith, had had discussions with these appellants and was able to scope matters. As such, the County brought a Motion seeking the following relief:

[10] Walton Appeal:

- a. An Order of the Board that the appeal of Zoning By-Law 61-16 is site specific to the Walton lands and that site specific appeal should be adjourned *sine die*. Walton is represented by Ms. Piurko who was absent for this PHC. However, Ms. Piurko advised Ms. Smith, that her client was agreeable to this request. As such, given that there was no objection, this specific relief was granted.

[11] Empire Appeal:

- a. An Order of the Board that the appeal of Zoning By-Law 61-16 is site

specific to the Empire lands and that site specific appeal be adjourned to a later date which could be set when a first PHC is conducted for Empire's appeal of related planning instruments. Those other appeals are not before me as although they have been assigned a Board File No. (PL 161164), notice has not been provided for that first PHC. Mr. DeMelo was in attendance as counsel to Empire and he was agreeable to scheduling his client's appeal at the same time at the first PHC on PL 161164. That PHC will be held on **Wednesday, April 19, 2017 at 10:30 am at the Council Chambers, Municipal Building, 7 Broadway Street, Paris, Ontario**. That same PHC will be used as a second PHC for this matter (PL160641) and I will conduct that PHC. An affidavit of service is to be provided to the Board in advance to ensure proper notice has been given. At this follow-up PHC, I will hear motions, should it be necessary, for party status and consolidation. Should there be a contest concerning these motions, motion materials must be served in accordance with the Board's *Rules of Practice and Procedure*.

[12] 148:

- a. An Order of the Board that the appeal be allowed and Zoning By-Law 61-16 be amended in accordance with the Zoning By-Law Amendment as set out in Exhibit "F" to the Affidavit of Ruchika Angrish dated December 9, 2016. Mr. Nelligan was in attendance as counsel to 148 and he was in agreement with relief sought. The relief sought would implement an earlier decision of this Board differently constituted. Given that there was no objection, the Board provided an oral disposition granting this specific relief.

[13] Comprehensive Zoning By-Law Coming into Force except for site specific appeals of Walton and Empire:

- a. An Order of the Board that pursuant to the subsection 34(11) of the

*Planning Act*, declaring that Zoning By-Law 61-16, as set out in Exhibit “K” to the above-noted affidavit, save and except for those lands subject to the Walton and Empire appeals, is not in issue or under appeal and therefore, is deemed to have come into force on the day the Zoning By-Law was passed, specifically, May 24, 2016.

- b. Further that such Order shall be without prejudice to the rights of any party and shall not have the effect of limiting the resolution of any appellant’s appeal, or any party’s right to seek to amend portions of By-Law 61-16.
- c. Further that the Board retains jurisdiction to consider and approve modifications to any regulations approved as may be appropriate to dispose of any of the outstanding appeal before the Board, in accordance with the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28.
- d. Given that there was no objection to this approach, the Board provided an oral disposition in accordance with the relief sought as noted above in paragraph 15(a) with the provisos as set out in paragraphs 15(b) and 15(c).

[14] Party Status of Lasani Homes (1998) Ltd. (“Lasani”) and Riverview Highland St. George Holdings (“Riverview”) and Brant Star Developments Ltd. (“Brant Star”):

- a. Lasani, as represented by its counsel, Ms. Meader, and Riverview and Brant Star, as represented by their counsel, Mr. Hitchon, provided notice that each would be seeking party status to the Empire appeals noted above in paragraph 13(a).
- b. Each were granted party status in relation to the Motion which had been brought by the County.

[15] The above written decision captures the Orders provided verbally. There will be no further notice provided, other than that set out in this decision, for the second PHC with respect to this file PL160641.

*“J. V. Zuidema”*

J. V. ZUIDEMA  
VICE-CHAIR

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**Ontario Municipal Board**

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