

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: November 29, 2019

CASE NO(S): PL171215

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Losani Homes (1998) Ltd.
Subject:	Application to amend Zoning By-law No. 61-16 - Neglect of the County of Brant to make a decision
Existing Zoning:	(A) Zone, Agricultural Zone with one Special Provision (A-13), Agricultural Holding Zone and Residential Singles and Semis (HA-R2) Zone, Natural Heritage (NH) Zone and Employment Zone with a Special Provision (Mi-i)
Proposed Zoning:	Residential Singles Zone (Ri), with special exception (RI-_) to accommodate the single detached dwellings and larger street fronting rowhouses; Residential Multiple Medium Density Zone (RM2), with special exception (RM2-_) to Residential Multiple High Density (RM3), with special exception (RM3-_) to accommodate mixed use developments; Recreational Facilities (OS2) Zone to accommodate the parks and the stormwater management facilities; Natural Heritage Zone (NH) to accommodate the natural heritage features.
Purpose:	To permit the proposed draft plan of subdivision
Property Address/Description:	Part of Lot 7 and 8, Concession 2
Municipality:	County of Brant

Municipality File No.: ZBA20-17-RA
 OMB Case No.: PL171215
 OMB File No.: PL171215
 OMB Case Name: Losani Homes (1998) Ltd. v. Brant (County)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Losani Homes (1998) Ltd.
 Subject: Proposed Plan of Subdivision - Failure of the County of Brant to make a decision
 Purpose: To permit 1292-1700 residential units consisting of single detached, townhouses, medium density residential, mixed use along with parks and SWM ponds
 Property Address/Description: Part of Lot 7 and 8, Concession 2
 Municipality: County of Brant
 Municipality File No.: PS2-17-RA
 OMB Case No.: PL171215
 OMB File No.: PL180025

Heard: September 20, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel

Losani Homes (1998) Ltd.	D. Baker
County of Brant	J. Zuidema
Riverview Highlands (St. George) Holdings Ltd.	J. Hitchon
Empire Communities (St. George) Ltd.	K. Jennings
Parkland Fuel Corporation	M. Kemerer
John Newton	A. Ciccone

DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision and Order results from the second Pre-hearing Conference (“PHC”) on appeals by Losani Homes (1998) Ltd. (“Appellant”) of the County of Brant’s (“County”) failure to make decisions on applications submitted by the Appellant for the approval of a draft plan of subdivision and an implementing zoning amendment for lands at Part of Lots 7 and 8, Concession 2, Township of South Dumfries (“Site”). The Site is in the community of St. George.

[2] The Memorandum of Oral Decision and Order from the first PHC was issued by the Tribunal on July 18, 2018 and served to: identify the Parties as noted above; grant Participant status to 15 individuals; and schedule this second PHC to get an update on the Parties efforts to resolve, define and scope the issues.

THE PHC

[3] Counsel for the Parties participated in the call as noted. No Participants called in.

[4] In advance of the PHC, the Parties had submitted a draft Procedural Order (“PO”) and it was reviewed and discussed. The Tribunal directed that Denise Baker, Counsel for the Appellant, revise the draft PO as discussed and resubmit it to the Tribunal for approval.

[5] The Parties requested that the Tribunal, based on the draft PO, schedule a 15 day hearing and a third PHC by telephone conference call.

[6] The Parties committed to continue to work together in an effort to resolve and scope the issues.

[7] A final draft PO was submitted by Ms. Baker as requested. It has been revised by the Tribunal largely to reflect the fact that Participants, pursuant to recent Provincial legislation, are only allowed to participate in the determination of this matter in writing and to simplify and remove redundancies in the issues list. The final approved version of the PO is provided as Attachment 1 and it, amongst other matters, identifies the due date for the submission of written statements from the Participants.

ORDER

[8] The Tribunal orders as follows:

- A. The hearing is scheduled for 15 days beginning at **10 a.m., Monday, August 17, 2020 at:**

**Municipal Building
Council Chambers
7 Broadway Street West
Paris, Ontario, N3L 2R2**

- B. The PO provided as Attachment 1 shall govern the preparations for the hearing and the hearing itself. All Parties and Participants are to note the content and requirements of the PO and are to comply with it, including undertaking all of the required actions by the specified deadlines.
- C. A third PHC is scheduled by telephone conference call for **Friday, March 13, 2020 at 9 a.m.** Individual(s) are directed to call **416-212-8012** or Toll Free **1-866-633-0848** on the assigned date at the correct time. When prompted, enter the code **4779874#** to be connected to the call. If assistance is required at any time, press '0' for the operator. It is the responsibility of the person(s) participating in the call to ensure that they are properly connected to the call and at the correct time. Questions prior to the call may be directed to **Azeem Patel**, the Tribunal's Case

Coordinator, at **416-326-6782**.

- D. The purpose of the third PHC, as identified at this time, is to receive an update on matters associated with the appeals and preparations for the hearing including any efforts to resolve or scope issues.
- E. The Parties and the Participants are to receive a copy of this Decision and Order and no additional notice of the hearing or the third PHC is to be issued by the Tribunal.

[9] This Member is not seized.

“Thomas Hodgins”

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1



Local Planning Appeal Tribunal Procedural Order

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Losani Homes (1998) Ltd.
Subject:	Application to amend Zoning By-law No. 61-16 - Neglect of the County of Brant to make a decision
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PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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Purpose: To permit 1292-1700 residential units consisting of single detached, townhouses, medium density residential, mixed use along with parks and SWM ponds

Property Address/Description: Part of Lot 7 and 8, Concession 2

Municipality: County of Brant

Municipality File No.: PS2-17-RA

OMB Case No.: PL171215

OMB File No.: PL180025

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on August 17, 2020 at 10:00a.m. at Municipal Building, Council Chambers, 7 Broadway Street West, Paris, in the County of Brant. The length of the hearing will be 15 days.
3. The parties and participants identified at the prehearing conference are set out in **Attachment 1**.
4. The Order of Evidence to be called at the Hearing is set out in **Attachment 2**.

5. The Issues are set out in **Attachment 3**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The Meaning of terms used in this Procedural Order are set out in **Attachment 4**.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **May 15, 2020**.
8. Expert witnesses in the same field shall have a meeting on or before **June 18, 2020** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to the Tribunal, the parties and the Clerk on or before **June 29, 2020**.
9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. The witness statement shall reasonably outline the evidence and opinions to be given at the hearing. Copies of this must be provided as in section 13. Instead of a witness statement, the expert may file his or her entire report if it contains the required information.
10. Parties must provide any non-expert witness statement to the Tribunal, the other parties and the Clerk, on or before **July 8, 2020** or the witness may not give oral evidence at the hearing.
11. A participant must provide to the Tribunal and the parties a participant statement on or before **July 8, 2020**. A participant is only permitted to make or file a written statement – called a participant statement- to the Tribunal. Participants cannot provide oral evidence.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section 13.
13. The parties shall provide copies of any expert witness statements to the Tribunal, the other parties and to the Clerk on or before **July 8, 2020** or the witness may not give oral evidence at the hearing.

14. Parties may provide to the Tribunal, the other parties and file with the Clerk a written response to any written evidence received on or before **July 17, 2020**.
15. Parties shall provide copies of their visual evidence to all of the other parties on or before **July 28, 2020**. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.
17. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal and the other parties on or before **August 10, 2020** that the written evidence is not part of their record.
18. Losani Homes (1998) Ltd. shall prepare a work plan and circulate it to the parties by August 4, 2020 for comment. The finalized workplan shall be submitted to the Tribunal on or before **August 10, 2020**.
19. Any draft zoning by-law or draft plan conditions to be provided to the Tribunal at the hearing shall be circulated at least on or before **August 10, 2020** to the parties and the Tribunal.
20. Documents may be delivered by personal delivery, email, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
21. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is not seized.

So orders the Tribunal.

ATTACHMENT 1
LIST OF PARTIES/PARTICIPANTS

PARTIES

1. Losani Homes (1998) Ltd.

Denise Baker
WeirFoulds LLP
4100-66 Wellington Street West
Toronto, ON M5K 1B7

dbaker@weirfoulds.com
416-947-5090

2. County of Brant

Jyoti Zuidema
County of Brant
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Paris, ON N3L 2M2

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3. Riverview Highlands (St. George) Holdings Ltd.

Jay Hitchon
Waterous Holden Amey Hitchon LLP
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4. Empire Communities (St. George) Ltd.

Paul DeMelo
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5. Parkland Fuel Corporation

Devry Smith Frank LLP
Marc Kemerer
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6. John Newton

Peter Pickfield
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PARTICIPANTS

1. David Foy
2. Pauline Foy
3. Faisal Firoz
4. Sadaf Faisal
5. Wade Stevenson
6. Paula Stevenson
7. Daryle Delafosse
8. Jeff Wharton
9. Jeannette Wharton
10. Lionel Teed
11. Wendy Teed
12. James Randall
13. Alicia Randall
14. David Hanley
15. Sonya Gasparitsch

ATTACHMENT 2
ORDER OF EVIDENCE

1. Losani Homes (1998) Ltd.
2. County of Brant
3. Riverview Highlands (St. George) Holdings Ltd.
4. Parkland Fuel Corporation
5. John Newton
6. Empire Communities (St. George) Ltd.
7. Reply, if any, by Losani Homes (1998) Ltd.

ATTACHMENT 3

ISSUES LIST

Note: The identification of an issue on this list doesn't mean that all Parties agree that the issue, or the manner in which it is expressed, is appropriate for or relevant to the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the Hearing.

Where other parties have indicated an interest in a particular issue of another party, it has been so noted following the specific issue.

Any Party may call or not call evidence on any issue of another Party; however, no Party is obligated to call evidence on any particular issue or every issue of another Party.

COUNTY OF BRANT PLANNING

Planning

1. OPA-8: Are the applications premature given the upcoming LPAT hearing of the St. George Official Plan Amendment (OPA-8) (LPAT Case PL180470)? Has the Applicant demonstrated that the proposed densities conform to and maintain the intent of the recently amended St. George Area Study and OPA-8?
2. Does the proposed development represent an appropriate level of density (persons/jobs per hectare)? Has the Applicant demonstrated that the requested density (units per hectare) in the proposed draft plan and the site-specific zoning is appropriate and will not adversely impact the character of the rural community of St. George?
3. Is the Six Nations Elected Council satisfied with the proposed development and archaeological issues? If not, why not?
4. Subdivision design: Are the final development constraint limits, top of slope and corresponding setbacks correct and appropriate? Are the internal design of the draft plan and the road connections to adjacent developments appropriate and do they allow for coordinated planning to ensure that the draft plan and the St. George Area develops into a functional, connected and complete community, in term of amenity and community uses, transportation, walkability, trails , cycling

etc.?(**Riverview Highlands (St. George) Holdings Ltd.**) Does the proposed plan allow for the appropriate and efficient extension of services to the adjacent subdivisions? (**Riverview Highlands (St. George) Holdings Ltd.**) Are the parks, including Park Block 78, appropriately located and sized to accommodate the required amenities? Is the school site appropriately sized and located? Should a public library be provided for in the plan?

5. Does the proposed Zoning By-Law Amendment include the necessary regulations and provisions to ensure an appropriate lot and block structure and built form? Do the proposed provisions and regulations have appropriate regard for the site and the character of the surrounding lands and do they minimize the impact on surrounding lands? Are the proposed parking regulations appropriate? (**Riverview Highlands (St. George) Holdings Ltd.**) Should the school site be zoned to permit a community center, gymnasium and sports field?
6. Does the proposed development meet the D-6 Guidelines and is the proposal compatible with the industrial area to the west of the subject lands?
7. Does the proposed development represent appropriate urban design and should the Applicant be required to submit Urban Design Guidelines for the proposed draft plan?
8. Should the proposed development be phased? If so, has the applicant provided a phasing plan? (**Riverview Highlands (St. George) Holdings Ltd.**)
9. Are there conditions which should be imposed by the Local Planning Appeal Tribunal under subsection 51(25) of the Planning Act, if development is approved for the subject lands?
10. Are the Grand Erie District School Board and Brant Haldimand Norfolk District Catholic School Boards satisfied? If not, why not?
11. Is the Grand River Conservation Authority (“GRCA”) satisfied with the proposed development including in respect to: groundwater contour information; floodplain mapping; the proposed road connection to German School Road; and safe access to Park Block 78 given the GRCA’s comments on a creek crossing for this purpose?

12. Are the following studies from the Applicant required, have they been submitted and are the results appropriate?: preliminary designs and hydraulic calculations for the proposed creek crossings; erosion analysis; water balance analysis and mitigation plan for the natural heritage features and overall site infiltration; environmental impact study assessing any impacts to natural heritage features on the subject property and in the vicinity; an analysis demonstrating no adverse impacts to groundwater quality and quantity.

Engineering

13. Is the proposed development premature given that the Municipal Class Environment Assessment for Water and Wastewater has not been completed? **(Riverview Highlands (St. George) Holdings Ltd.)**

14. Has the Applicant demonstrated that there is sufficient infrastructure, including sufficient water service capacity and water distribution and sanitary sewer capacity, current and/or planned, for the development taking into account other planned developments, and if there is not, is the proposed rezoning and plan of subdivision premature? **(Riverview Highlands (St. George) Holdings Ltd.)**

15. What contribution, if any, should the Applicant make towards the cost of upgrading existing municipal infrastructure to accommodate the proposed development? These services include roads, sewer and water main upgrades. **(Riverview Highlands (St. George) Holdings Ltd.)**

16. Has the Applicant adequately addressed and demonstrated: Any required road widenings on Beverly Street West, Highway #5 and Main Street South to accommodate the proposed long term road improvements? Any appropriate traffic calming measures in terms of roundabouts and a schematic of the roundabouts demonstrating that the ROW limits at those intersections are sufficient? No adverse traffic impacts caused by the proposed development when considering all relevant factors including the impact of all proposed residential subdivisions in the area? That the streets in the draft plan align with existing intersections and the proposed developments within the area? Any required improvements to existing intersections? That the proposed parking will not have an adverse impact on on-street parking.

16. Does the Stormwater Management Plan adequately address the issue of storm drainage and demonstrate that the proposed development will not negatively impact storm drainage in the area or result in future maintenance concerns for the County of Brant? **(Riverview Highlands (St. George) Holdings Ltd.)**
17. Does the Functional Servicing Report address all matters in accordance with County's standards and determine that there are no adverse impacts caused by the proposed development?
18. Has a staging (phasing) plan been prepared for the upgrading of both the water distribution system and existing sanitary sewers required as a result of the proposed development?
19. Has the applicant demonstrated that the erosion constraints identified in the Environmental Impact Assessment from the existing natural features will not impact the Stormwater Management infrastructure?

Archaeology

20. Has the Applicant for the development submitted a further Stage 3 archeological assessment as required by the Ministry of Tourism, Culture and Sport, in accordance with current guidelines and standards? Is there a requirement to do so?

JOHN NEWTON

1. Does the proposed Plan of Subdivision have regard for matters of Provincial Interest as set out in Section 2 e) f) h) j) l) n) p) q) r) and appropriately consider the criteria under Section 51(24) of the Planning Act?
2. Is the proposed Plan of Subdivision consistent with the policies in Section 1.0 of the Provincial Policy Statement, 2014 that guide development, the efficient use of resources and the coordination of planning matters?
3. Does the proposed Plan of Subdivision conform to policies in Sections 1.1, 1.2, 2.1, 2.2, and 5.2 of the Growth Plan for the Greater Golden Horseshoe 2019 that

guide development, the efficient use of resources and the coordination of planning matters?

4. Does the proposed Plan of Subdivision comply with or maintain the intent of the County of Brant's Official Plan (2012 Cons.), in Sections 1.1, 1.9, 1.10, 1.11, 2.2, 2.4, 2.7, 3.2, 3.4, 5.2, 6.6 and 6.7? (see also County Issues)
5. Does the proposed Plan of Subdivision meet the proposed Official Plan Amendment (OPA 8) for St. George in Sections 5, 7, 8, and 2.8 as it relates to the long-term intent and vision, the efficient use and coordination of development for these lands? (see also County Issues)
6. Should the proposed Plan of Subdivision be designed to ensure that it does not preclude or hinder the future development of the adjacent lands at Part Lot 7, Concession 2, County of Brant, in the former Township of South Dumfries, located at 183 Main Street South (St. George ON), which are designated Urban Residential in the County of Brant Official Plan and located within the Primary Urban Settlement Area Boundary?

PARKLAND FUEL CORPORATION

1. Should any changes to the applications locate any sensitive uses within the hazard distances applicable to the Parkland propane facilities (the "Facilities") at 150 and 183 Industrial Boulevard, would the applications:
 - a. be consistent with the PPS 2014, including but not limited to, Policies 1.1.1, 1.2, 1.3, 1.4 and 3.0;
 - b. conform to the County OP, including but not limited to, Sections 1.11.2, 2.7, 3.11.3 and 3.12.3;
 - c. meet the TSSA Regulations and Guidelines for the implementation of Level 2 Risk and Safety Management Plans;
 - d. be compatible with the industrial areas to the west of the subject lands;
and
 - e. have appropriate regard for the continued operation of the Facilities and to the associated matters of public health and safety.

Empire Communities (St. George) Ltd.

1. Should the application be approved, is it appropriate to include the following as a draft plan condition: **(Riverview Highlands (St. George) Holdings Ltd.)**

Prior to final approval of the Draft Plan of Subdivision or any phase thereof, the Developer/Owner shall enter into one or more cost sharing or land owners group agreements to ensure the provisions of or funding for the Community and Common Facilities (such as municipal services and public roads) or make alternative arrangements to satisfy its cost share or developers group responsibilities. The owner acknowledges and agrees that the County shall not be obligated, required or demanded to release the Draft Plan of Subdivision or any phase thereof until the owner has obtained and provided a certificate confirming that it has entered into such agreements or made alternative arrangements and satisfied any obligations outlined in the agreement to the satisfaction of the escrow agent or Trustee of the land owners group.

ATTACHMENT 4

Meaning of terms used in the Procedural Order

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence.

Participant is an individual or corporation, who is not a party to a proceeding and is only permitted to make or file a written statement to the Tribunal, upon such terms as the Tribunal may determine in respect to the proceeding. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party intends to present as evidence at the hearing or a participant intends to include in its written participant's statement. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party intends to present as evidence at the hearing or a participant intends to include in its written participant's statement.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a written document that sets out the Participant's position on the matter and issues of the proceeding together with an explanation of their reasons in support of their position. The participant statement should clearly indicate the OMB Case No. and the participant's name, current address and current contact information.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way: direct examination by the party presenting the witness; direct examination by any party of similar interest, in the manner determined by the Tribunal; cross-examination by parties of opposite interest; re-examination by the party presenting the witness; or another order of examination mutually agreed among the parties or directed by the Tribunal.