

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



**ISSUE DATE:** April 27, 2021

**CASE NO(S):**

PL171383

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 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: J.A.N. Group Inc.  
Subject: Failure of the City of Hamilton to announce a decision respecting Proposed Official Plan Amendment No. UHOPA-16-028

Municipality: City of Hamilton  
OMB Case No.: PL171383  
OMB File No.: PL171383  
OMB Case Name: J.A.N. Group Inc. v. Hamilton (City)

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

Applicant and Appellant: J.A.N. Group Inc.  
Subject: Application to amend Zoning By-law No. 3692-92 Stoney Creek Zoning By-law - Refusal or neglect of the City of Hamilton to make a decision

Existing Zoning: RM3-16 (Multiple Residential)  
Proposed Zoning: RM4 (Multiple Residential)  
Purpose: To permit the redevelopment of the subject site with a four-storey apartment building with 48 units

Property Address/Description: 261 King Street East  
Municipality: City of Hamilton  
Municipality File No.: ZAR-16-062  
OMB Case No.: PL171383  
OMB File No.: PL171384

**Heard:** March 4, 2021 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

J.A.N Group Inc.

S. Snider

City of Hamilton

A. Flarity

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN COOKE ON  
MARCH 4, 2021 AND INTERIM ORDER OF THE TRIBUNAL**

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[1] This was a Settlement hearing in the matter of appeals by J.A.N Group Inc. (“Applicant”) from the failure of the City of Hamilton (“City”) to make a decision in respect to applications for amendments to the Official Plan (“OP”) and Zoning By-law amendments (“ZBA”) to permit a mixed use development at the properties municipally known as 261 King Street East (“Subject Site”).

**PLANNING EVIDENCE**

[2] Ms. Brenda Khes was qualified by the Tribunal to give expert land use planning evidence and opinion.

[3] Ms. Khes described the proposed settlement as two three-storey buildings with 16 dwelling units in each located along the east side of the Subject Site. In addressing the concerns of neighbours there will be no balconies, but residents will have outdoor amenity spaces located between the two buildings. The west side of the Subject Site will contain 24 surface parking spaces set back from the property line 4 to 5 metres. This will allow for the preservation of the large cedar and spruce trees along the west property line.

[4] Addressing the concern that the proposed development may create negative shadowing. Ms. Khes informed the Tribunal that height restriction of a maximum of three-storeys, which is shorter than some of the existing trees, and with the generous

setbacks from the property lines, shadowing would be minimal.

[5] It is the opinion of Ms. Khes that the settlement is consistent with the Provincial Policy Statement 2020 (“PPS”) and conforms to the Growth Plan for the Greater Golden Horseshoe 2020 (“GP”). The redevelopment of the Subject Site supports the objectives of these provincial policies by providing infill development in a settlement area, utilizing existing municipal infrastructure, creating an efficient development of a land use pattern that will sustain financial well being of the Province and the City, accommodates a range of mixed residential dwellings, and is supported by public transit.

[6] Ms. Khes testified that the Subject Site is located on what is identified as a Minor Arterial Road within the Neighbourhoods complement of the City's urban structure that allows for a range of residential uses, including medium density development. The ZBA includes minimum setbacks manscaping screening and a maximum density provision specific to the proposed development. It is her opinion that the proposed development would conform with the OP and the ZBA to medium density designation is appropriate

## **ANALYSIS AND FINDINGS**

[7] In determining this matter, the Tribunal accepts and adopts the uncontested land use planning evidence and expert opinions provided by Ms. Khes. The Tribunal is persuaded by the evidence that the proposal promotes efficient development of land, intensifies uses within the settlement area, optimizes the use of existing urban land supply, and will be supported by public transit.

[8] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS, and conforms to the relevant directives established by the GP, and as maintained by the OP. The Tribunal is further satisfied that the proposal has due regard for matters of Provincial interest, is consistent with the principles of good land use planning and is in the greater public interest. More significantly, the proposal furthers the goals and objectives of the Provincial planning regime to increase housing

opportunities.

## **ORDER**

[9] The Tribunal orders that the appeal filed on behalf of J.A.N. Group Inc. is allowed.

[10] The Urban Hamilton Official Plan is amended in accordance with Attachment 1 appended hereto.

[11] Stoney Creek Zoning By-law No. 3692-92 is amended in accordance with Attachment 2 appended hereto.

[12] The Attachments appended to this Order shall form part of this Order.

[13] The Member may be spoken to should any matters arise respecting the implementation of this Order.

*“Steven Cooke”*

STEVEN COOKE  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

### **Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

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

## Urban Hamilton Official Plan Amendment No. X

The following text, together with Appendix “A” – Volume 2: Map B.7.1-1 Western Development Area Secondary Plan – Land Use Plan, attached hereto, constitutes Official Plan Amendment No. X to the Urban Hamilton Official Plan.

### 1.0 **Purpose and Effect:**

The purpose and effect of this Amendment is to redesignate lands within the Western Development Area Secondary Plan to permit the development of two, three-storey multiple dwellings containing a combined total of 32 dwelling units and a maximum density of 84 units per hectare.

### 2.0 **Location:**

The lands affected by this Amendment are known municipally as 261 King Street East, in the former City of Stoney Creek.

### 3.0 **Basis:**

The basis for permitting this Amendment is:

- The proposed Amendment is in keeping with the policies of the Urban Hamilton Official Plan and Western Development Area Secondary Plan to provide a diversity of housing opportunities and represents an efficient use of urban lands along a minor arterial road.
- The proposed development is consistent with, and complimentary to, the planned and existing development in the immediate area.
- The Amendment is consistent with the Provincial Policy Statement, 2020 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2019.

#### **4.0 Actual Changes:**

#### **4.1 Volume 2 – Secondary Plans**

##### **Text**

##### 4.1.1 Chapter B.7.0 – Stoney Creek Secondary Plans – Section B.7.1 – Western Development Area Secondary Plan

- a. That Volume 2: Chapter B.7.0 – Stoney Creek Secondary Plans, Section 7.1 – Western Development Area Secondary Plan be amended by adding a new Site Specific Policy, as follows:

##### **“Site Specific Policy – Area “D”**

- B.7.1.5.X For the lands located at 261 King Street East designated “Medium Density Residential 3” and identified as Site Specific Policy Area “D” on Map B.7.1-1 Western Development Area Secondary Plan – Land Use Plan, the following policies shall also apply:
- a) Notwithstanding Policies E.3.5.2 and E.3.5.8 of Volume 1 and Policy B.7.1.1.4 a) of Volume 2, only two multiple dwellings having a maximum height of three storeys shall be permitted;
  - b) Notwithstanding Policy E.3.5.7 of Volume 1 and Policy B.7.1.1.4 b) of Volume 2, the density shall range from 50 and 84 units per net residential hectare.”

##### **Maps and Appendices**

##### 4.1.2 Map

- a. That Volume 2, Map B.7.1-1 – Western Development Area Secondary Plan – Land Use Plan be amended by:
- i) redesignating lands from “Low Density Residential 2b” to “Medium Density Residential 3”; and,
  - ii) identifying the subject lands as Site Specific Policy – Area “D”

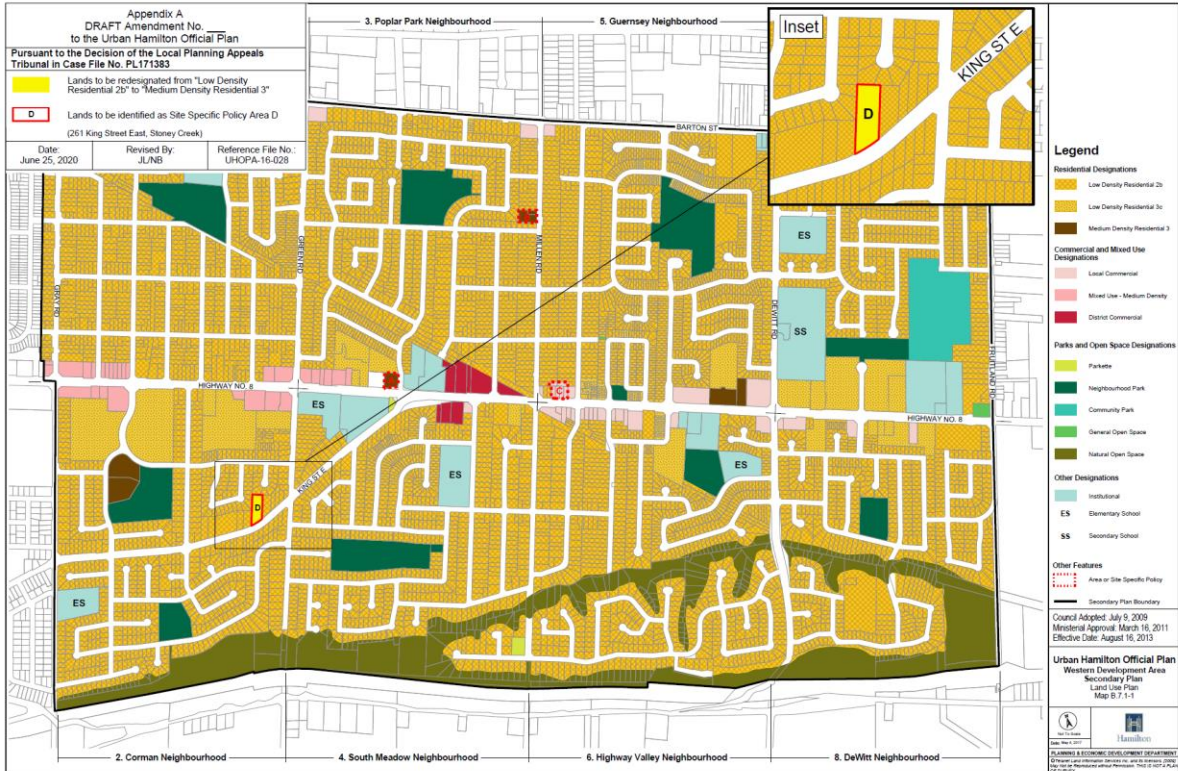
as shown on Appendix "A", attached to this Amendment.

**5.0 Implementation:**

An implementing Zoning By-Law Amendment and Site Plan will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule "1" to By-law No. \_\_\_\_\_ pursuant to the Decision/Order of the Local Planning Appeals Tribunal issued in Case No. PL171383.

**The  
City of Hamilton**





**Authority:** Item [REDACTED], Planning Committee  
Report: 20-[REDACTED] (PED20\_\_\_)  
CM: [REDACTED], 2020

**Bill No. [REDACTED]**

## **CITY OF HAMILTON**

### **BY-LAW NO. 20-[REDACTED]**

#### **To Amend Zoning By-law No. 3692-92 (Stoney Creek), Respecting Lands Located at 261 King Street East (Stoney Creek)**

**WHEREAS** the *City of Hamilton Act, 1999*, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the 'City of Hamilton" and is the successor to the former Regional Municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

**AND WHEREAS** the *City of Hamilton Act, 1999* provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8<sup>th</sup> day of December 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1994;

**AND WHEREAS** pursuant to the Order/Decision of the Local Planning Appeal Tribunal Issued on \_\_\_\_\_, 2020, under Tribunal File No. PL171383, approved that Zoning By-law No. 3692-92 (Stoney Creek), be amended as hereinafter provided;

**AND WHEREAS** this By-law will be in conformity with the Urban Hamilton Official Plan, upon adoption of Official Plan Amendment No. [REDACTED];

**NOW THEREFORE** the Local Planning Appeal Tribunal, pursuant to the Order/Decision Issued on XXX, 2020, under Tribunal File No. PL171383, enacts as follows:

1. That Map No. 6 of Schedule “A”, appended to and forming part of By-law No. 3692-92 (Stoney Creek), is amended as follows:
  - (a) by changing the zoning from the Multiple Residential “RM3-16” Zone, Modified to the Multiple Residential “RM4-9” Zone, Modified, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.
2. That Subsection 6.11.6, “Special Exemptions” of Section 6.11, Multiple Residential “RM4” Zone, of Zoning By-law No. 3692-92, be amended by adding a Special Exemption “RM4-9” as follows:

**“RM4-9” 261 King Street East, Schedule “A” Map No. 6**

Notwithstanding the provisions of Paragraphs (a), (c), (d), (e), (i), (j), (k) and (l) of Subsection 6.11.3 “Regulations for Permitted Uses” on those lands zoned “RM4-9” by this By-law, the following shall apply:

- |   |  |
|---|--|
| (a) Minimum Lot Area  | 3,800 square metres  |
| (c) Minimum Front Yard  | 4 metres   |
| (d) Minimum Easterly Side Yard  | 1.5 metres   |
| (d) Minimum Westerly Side Yard  | 15 metres  |
| (e) Minimum Rear Yard   | 26 metres  |
| (h) Maximum Residential Density   | 32 dwelling units  |
| (i) Maximum Building Height   | 11 metres  |
| (j) Minimum Landscaped Open Space   | a minimum 4 metre landscaped strip shall be provided along the west and north lot lines. |
| (k) Minimum distance between residential buildings on the same lot                            | - 9 metres.  |
| (l) All required amenities shall be provided outdoors and no indoor amenity area is required. |  |

Notwithstanding the provisions of Paragraphs (a) and (c) of Section 6.11.4 “Regulations for Parking”, on those lands zoned “RM4-9” by this By-law, the following shall apply:

(a) Minimum Number of Parking Spaces:

1. 1.2 parking spaces for each dwelling unit;

In addition to Section 4.10 “Parking Regulations”, on those lands zoned Multiple Residential “RM4-9” by this By-law, all parking spaces along the west boundary line of the property shall be comprised of a Low Impact Development (LID) form including but not restricted to permeable pavers, porous pavement, and/or pervious concrete.

Notwithstanding the provision of Paragraph (a) of Section 4.10.3 “Dimensions of Parking Spaces”, on those lands zoned “RM4-9” by this By-law, the following shall apply:

- (a) Required parking spaces for 90<sup>0</sup> perpendicular parking shall have minimum rectangular dimensions of 3.0 metres by 5.8 metres exclusive of any lands used for access, manoeuvring, driveways or a similar purpose.

In addition to the provisions of Paragraphs (a) and (b) of Section 4.10.5 “Access to Parking Spaces”, on those lands zoned “RM4-9” by this By-law, the following shall apply:

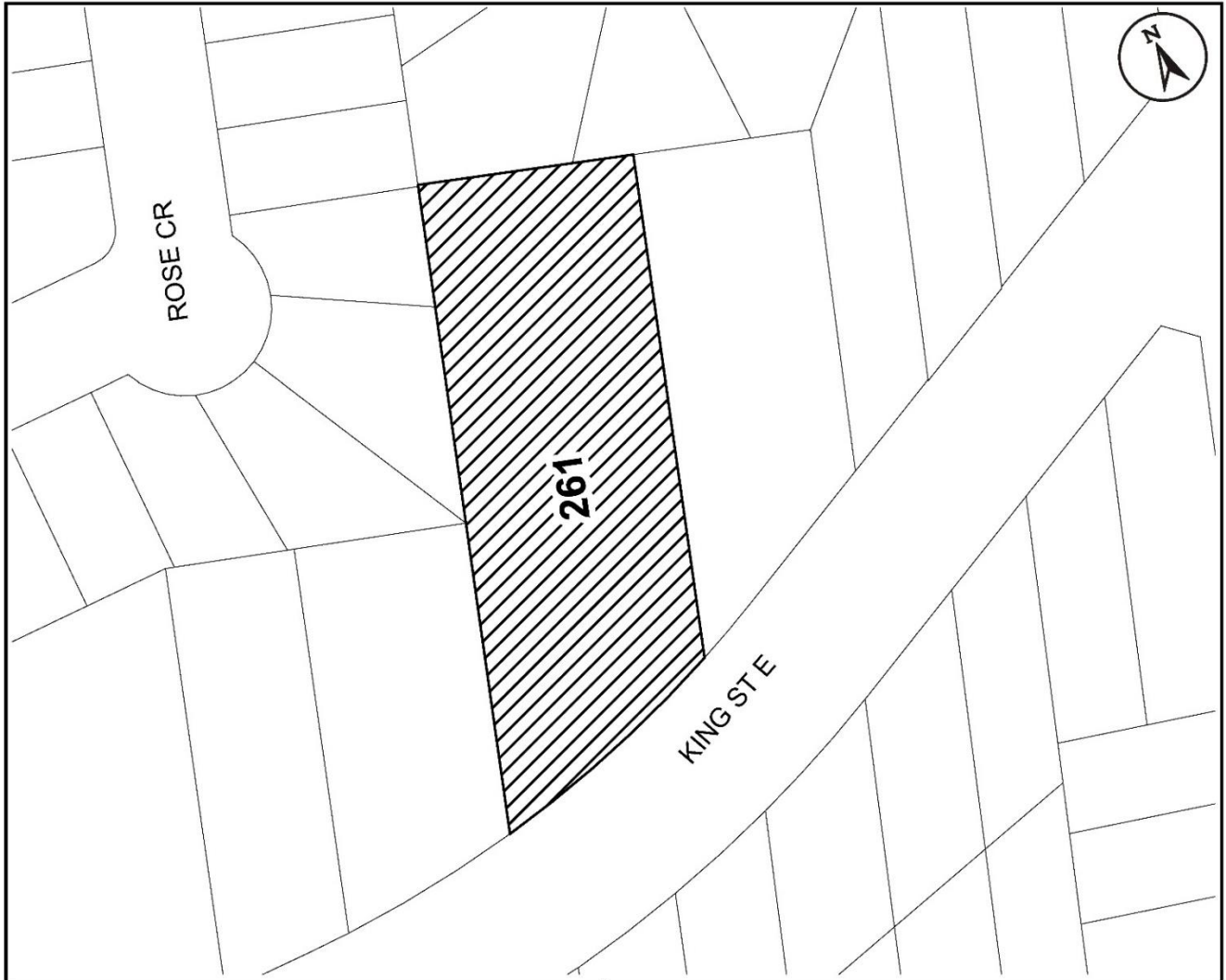
- (a) Direct Access - A 1.5 metre pedestrian sidewalk comprised of decorative pavement and distinguished pavement markings shall be permitted within the width of the 6 metre driveway, lane or aisle.
- (b) Indirect Access - A 1.5 metre pedestrian sidewalk comprised of decorative pavement and distinguished pavement markings shall be permitted within the width of the 6 metre driveway or lane.

All other regulations of the Multiple Residential “RM4” Zone shall apply.

3. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the *Planning Act*.

Pursuant to the Order/Decision of the Local Planning Appeal Tribunal Issued on \_\_\_\_\_, 2020, under Tribunal File No. PL171383.

ZAC-16-068




This is Schedule "A" to By-law No. 20-  
 Passed the ..... day of ....., 2020

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 Mayor  
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 Clerk

**Schedule "A"**  
 Map Forming Part of  
 By-law No. 20-\_\_\_\_\_  
 to Amend By-law No. 3692-92

**Subject Property**  
 261 King Street East, Stoney Creek

 Change in zoning from the Multiple Residential 3 "RM3-16" Zone, Modified, to the Multiple Residential "RM4-9", Zone Modified.

**Scale:**  
 N.T.S.

**File Name/Number:**  
 ZAC-16-068/UHOPA-16-028

**Date:**  
 June 23, 2020

**Planner/Technician:**  
 JVR/NB

