

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



ISSUE DATE: August 09, 2019

CASE NO(S): PL180302

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:	Knightstone Capital Management II Inc.
Subject:	Application to amend Zoning By-law No. 05-200 - Refusal or neglect of City of Hamilton to make a decision
Existing Zoning:	Downtown Multiple Residential (TOC1, H63)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the institutional student resident development
Property Address/Description:	1190 Main Street West et al
Municipality:	City of Hamilton
Municipality File No.:	ZAC-17-065
OMB Case No.:	PL180302
OMB File No.:	PL180302
OMB Case Name:	Knightstone Capital Management II Inc. v. Hamilton

Heard: June 27, 2019, in Hamilton, Ontario

APPEARANCES:

Parties

Knightstone Capital Management II Inc.

Counsel

Joe Hoffman

City of Hamilton

Joanna Wice
Andrew Biggart (in absentia)

**MEMORANDUM OF ORAL DECISION DELIVERED BY ANNE MILCHBERG ON
JUNE 27, 2019 AND ORDER OF THE TRIBUNAL**

[1] This was the first Pre-Hearing Conference (“PHC”) on an appeal under s. 34(11) of the *Planning Act* (“Act”) by Knightstone Capital Management II Inc. (“Knightstone”; “Appellant”). The City of Hamilton (“City”) failed to make a decision on a Zoning By-law Amendment (“ZBA”) application within the time frame specified in the Act. The ZBA pertains to the whole block bounded by Main Street West and Forsyth, Traymore and Dalewood Avenues, and is referred to in short as 1190 Main Street West et al (“the subject lands”; “the site”). The site is composed of 1190 Main Street West; 43, 47, 51 and 55 Forsyth Avenue South; 75, 77, 81, 83, 99, 103, 107, 111 and 115 Traymore Avenue; and 50 Dalewood Avenue.

[2] The site is on the edge of the Westdale neighbourhood, adjacent to the McMaster University campus. The proposal involves the removal of 14 single detached dwellings and their replacement by an institutional student residence building containing 1,406 beds, with a building height of 52.0 metres. The ZBA would rezone the subject lands from Downtown Multiple Residential (TOC1, H63) zone to a site-specific Major Institutional (I3, XXX) zone.

[3] On consent of the Parties, the Tribunal granted Participant status to these neighbouring residents:

- Branko Radisic;
- Olive and Suleiman Wahoush; and
- Krzysztof Krawic.

[4] Two groups appeared at the hearing, the unincorporated Concerned Citizens of McMaster Campus Community (“CCMCC”), led by John Wigle, and the incorporated Ainslie Wood Westdale Community Association Inc. (“Ainslie Wood”), led by Ira Rosen.

Each of these groups requested party status. Several individuals with connections to one or both of these groups were at the hearing to observe.

[5] Mr. Wigle told the Tribunal that the CCMCC currently comprises approximately 15 households, has hired a planner, and is prepared to call a case in a contested hearing. The Tribunal will grant Party status to CCMCC on condition that CCMCC incorporates by no later than end of business day on **Friday, August 30, 2019**, and advises the Tribunal's Case Coordinator that it has done so.

[6] John Thomson and Alan Livingstone requested Party status if the CCMCC fails to incorporate. As neither Mr. Thomson nor Mr. Livingstone indicated whether they would be prepared to hire expert witnesses and call cases, the Tribunal would only consider conferring Party status on each of them if the CCMCC fails to incorporate and the two requestors can demonstrate to the Case Coordinator, by **Tuesday, September 3, 2019**, that they would call a case (or separate cases) with expert testimony, failing which, the Tribunal would, upon their request, grant each of them Participant status as of September 3, 2019.

[7] Yael Greenberg requested Participant status if the CCMCC fails to incorporate. The Tribunal will confer this status to Ms. Greenberg on **Tuesday, September 3, 2019** if the CCMCC incorporation does not occur.

[8] As for the incorporated Ainslie Wood, its position was uncertain at the PHC as it was just starting to mobilize. It had not hired a planner, or yet determined its issues, or yet held discussions among its ranks, or met with the CCMCC to determine if there is common cause between the two groups. However, Ainslie Wood still wanted to be able to call witnesses in a contested hearing if it thought it was necessary.

[9] To address the prematurity of Ainslie Woods' request for Party status, the Tribunal granted Participant status to Ainslie Wood, and will 'upgrade' Ainslie Wood to Party status only on condition that it advises the Tribunal's Case Coordinator, by no later than end of business day, **on Friday, August 30, 2019**, that it intends to call a

case and provide witnesses and evidence in this matter.

[10] Furthermore, the Tribunal directed the CCMCC and Ainslie Wood to confer with each other to determine common issues and opportunities for consolidation or mutual efficiency in these proceedings.

[11] In addition, the Tribunal directed the Parties (as constituted on September 3, 2019) to file a Draft Procedural Order by no later than end of business day, **Monday, November 4, 2019**. It will be dealt with at the second PHC.

[12] The Tribunal directs a second PHC be scheduled for **Tuesday, November 12, 2019, commencing at 10 a.m.**, at:

**Hearing Room 101
City of Hamilton
50 Main Street East
Hamilton, ON L8N 1E9**

[13] No further notice is required.

[14] The Member is not seized.

[15] So orders the Tribunal.

“Anne Milchberg”

ANNE MILCHBERG
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: 1-866-448-224