

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



**ISSUE DATE:** January 16, 2020

**CASE NO(S):** PL180302  
PL200015

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

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

Appellant: Concerned Residents of Westdale  
Subject: Proposed Official Plan Amendment No.  
Municipality: City of Hamilton  
LPAT Case No.: PL200015  
LPAT File No.: PL200015  
LPAT Case Name: Concerned Residents of Westdale v. Hamilton (City)

**Heard:** January 6, 2020 by Telephone Conference Call  
("TCC")

**APPEARANCES:**

**Parties**

**Counsel**

Knightstone Capital  
Management II Inc. ("Applicant")

D. Bronskill

City of Hamilton ("City")

A. Biggart

Concerned Residents of  
Westdale ("CROW")

J. Meader

**MEMORANDUM OF ORAL DECISION BY BLAIR S. TAYLOR ON JANUARY 6, 2020  
AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] In November of 2019, the Tribunal had held its second Case Management Conference with regard to a Zoning By-law Amendment ("ZBA") appeal. At that time, the Tribunal was advised that an Official Plan Amendment ("OPA") had been recommended by the City Planning staff, that it had been approved by the City Planning Committee, and recommended to City Council, but not yet heard.

[2] The Tribunal was also advised that if the OPA were passed by City Council, CROW would appeal it to the Tribunal.

[3] Additionally, at that time, the Applicant requested a hearing date to be set, and that the parties had discussed Tribunal-led mediation.

[4] In view of these circumstances, the Tribunal set a TCC for a status hearing on this matter and gave direction for the preparation of a draft Procedural Order and Issues List and Hearing Plan.

[5] At the TCC, the Tribunal marked the draft Procedural Order as Exhibit 1 and was advised that CROW had new counsel; that an appeal of the OPA had been made; that a mediation request had been submitted; that the parties agreed that the OPA should be consolidated with the ZBA; that some revisions to the draft Procedural Order were required and was requested to set a ten-day hearing; and, discussed the role of participants at a hearing on the merits.

[6] For the reasons set out below, the Tribunal: consolidated the OPA to the ZBA appeal; directed revisions to the draft Procedural Order; allowed time for CROW to review its Issues List and provide any revisions to the other parties; directed that the revised Procedural Order be forwarded to the Case Coordinator; and, set a nine-day hearing,.

## **DECISION**

[7] The Tribunal would note that CROW has retained legal counsel: Nancy Smith and Jennifer Meader.

[8] With regard to the OPA, the Tribunal understands that the OPA has recently been appealed to the Tribunal, and while no one was yet aware of a Tribunal file number, counsel all agreed that the OPA should be consolidated with the ZBA.

[9] The Tribunal consolidated PL200015 (the OPA Tribunal file No.) and PL180302.

[10] Notice of the OPA will still be required to be issued by the Tribunal but that notice shall reference the hearing on the merits as set out below.

[11] With regard to the draft Procedural Order, counsel for the Applicant is directed to make the required revisions including the insertion of the hearing date, a correction to the wording of paragraph 15, insertion of the appropriate dates for the other required matters: e.g. exchange of witness statements, and revision to the Hearing Plan.

[12] Counsel for CROW requested additional time to review its issues in consideration of the cancellation of the Light Rail Transit (“LRT”) by the Province. Counsel shall have until **Friday, January 10, 2020 at noon** to provide any revisions in regard to that issue, and that is without prejudice to the other parties’ usual right to challenge.

[13] Counsel for the Applicant is directed to submit the revised Procedural Order to the Case Coordinator on or before **Friday, January 17, 2020** for issuance by the Tribunal.

[14] The Tribunal was asked to address the issue of the role of participants in its decision. Counsel all agreed that with the recent legislative changes to the *Planning Act* and the *Local Planning Appeal Tribunal Act*, participants may file a participant statement (on or before the date set out in the Procedural Order) but no longer are entitled to give oral evidence. The only apparent exception to this might arise if the Tribunal member hearing the matter, having read the participant’s written participant statement, had questions for the participant and wished to examine the participant orally pursuant to s. 33(2)(b) of the *Local Planning Appeal Tribunal Act*. That possibility would be totally at the discretion of the Tribunal member hearing the matter and would only be possible if a participant had filed a participant statement within the required timing.

[15] With regard to the setting of a hearing date, and with the matter of the mediation request outstanding at the Tribunal, counsel for the parties agreed that the Tribunal should set a hearing date and that ten days was an appropriate hearing length.

[16] The Tribunal set the matter down for a nine-day hearing commencing on **Monday, July 27, 2020 at 10 a.m. at:**

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

[17] The Tribunal anticipates that as a result of the meetings of like experts and the required agreed statements of fact, that some time saving, and scoping of issues will occur.

[18] Counsel for the City is directed to forthwith confirm the hearing venue to the Case Coordinator and all parties.

[19] Except for the required notice for the OPA, there will be no further notice.

[20] I am not seized.

[21] Scheduling permitting, I may be available for case management purposes.

[22] This is the Order of the Tribunal.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

If there is an attachment referred to in this document,  
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**Local Planning Appeal Tribunal**

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