

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



ISSUE DATE: November 20, 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

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|-------------------------------|---|
| 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: November 12, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Knightstone Capital Management II Inc. (“Applicant”)

D. Bronskill

City of Hamilton (“City”)

A. Biggart/J. Wice

Concerned Residents of Westdale
("CROW")

J. Wigle

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR AND
JATINDER BHULLAR ON NOVEMBER 12, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This was the second Case Management Conference concerning a Zoning By-law Amendment ("ZBA") appeal (a legacy matter) by the Applicant on behalf of McMaster University with regard to a land assembly of a city block which is known for the purposes of this hearing as 1190 Main Street West et al ("Subject Lands").

[2] The Tribunal heard an update with regard to a forthcoming Official Plan Amendment ("OPA") for the Subject Lands, a possible mediation request, reviewed a draft Procedural Order, gave direction to the parties with regard to the content of the draft Procedural Order and the preparation of a revised version, and set a Telephone Conference Call ("TCC") for early in 2020, all for the reasons as set out below.

DECISION

[3] The Tribunal was advised that the parties had had discussions concerning Tribunal-led mediation.

[4] The Tribunal encourages mediation as a viable alternative to lengthy and costly hearings, and thus the Tribunal suggests that a Mediation Request be prepared and filed with the Case Coordinator as soon as possible to enable an assessment of that request for Tribunal-led mediation.

[5] The Tribunal was further advised that City Planning Staff had recommended an OPA for the Subject Lands and that had been approved by the City Planning Committee

and was scheduled to be heard by City Council on November 13, 2019. If it were to be adopted by City Council, then it appears it would be appealed to the Tribunal by CROW, and counsel for the Applicant had no objection to it being consolidated with this ZBA appeal.

[6] However, counsel for the Applicant did seek to have a ten -day hearing set for the hearing on the merits of this matter. In that regard a draft Procedural Order had been provided to the Tribunal, with an Issues List for the ZBA. It was counsel's position that setting a hearing date would focus the attention of all the parties for the mediation.

[7] Counsel for the City and for CROW disagreed. It was submitted that if the OPA were adopted by City Council and appealed by CROW, there would be new issues to be added to the Issues List and that it would be premature to set a hearing date.

[8] The Tribunal declined to set a hearing date on the merits as if the OPA is adopted by City Council and appealed, this will likely add to the Issues List for the hearing.

[9] Rather the Tribunal set a TCC for **Monday, January 6, 2020 at 9 a.m.** Individuals may dial in at the appointed time to **416-212-8012 or 1-866-633-0848 (toll-free) and at the prompt enter code 4779874#.**

[10] At the TCC, the Tribunal anticipates receiving a status update on the following matters:

- a. The OPA;
- b. Any appeal of the OPA and possible consolidation;
- c. If Tribunal-led mediation has been scheduled;
- d. Revised draft Procedural Order;

- e. Revised draft Issues List;
- f. A draft Hearing Plan; and
- g. The role of participants at a hearing on the merits considering the recent amendments to the governing Provincial legislation and the Tribunal's *Rules of Practice and Procedure*.

[11] With regard to the draft Procedural Order, counsel for the Applicant will take the lead in the revisions, which will include mandatory meetings of like experts, the preparation of agreed statements of fact, the inclusion of a hearing plan, and revisions, to the Issues List that may arise out of an appeal and consolidation of the OPA.

[12] The Tribunal directs that the City and CROW shall provide their proposed revisions and issues to counsel for the Applicant on or before **Monday, December 9, 2019**, and counsel for the Applicant shall provide the revised draft Procedural Order including the revised Issues List and the draft hearing plan, to the Case Coordinator on or before **Wednesday, December 18, 2019**.

[13] There will be no further notice of the TCC.

[14] We are not seized.

[15] Scheduling permitting, we may be available for case management purposes.

[16] This is the Order of the Tribunal.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

“Jatinder Bhullar”

JATINDER BHULLAR
MEMBER

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Local Planning Appeal Tribunal

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