

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



ISSUE DATE: March 17, 2020

CASE NO(S): PL180470

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

Appellant:	Parkland Fuel Corporation
Appellant:	Stremma Developments (St. George) Inc.
Subject:	Proposed Official Plan Amendment No. OPA-A-16-RA
Municipality:	County of Brant
OMB Case No.:	PL180470
OMB File No.:	PL180470
OMB Case Name:	Parkland Fuel Corporation v. Brant (County)

Heard: February 19, 2020 by telephone conference call

APPEARANCES:

Parties

Counsel

County of Brant

Jyoti Zuidema and Jennifer Meader

Parkland Fuel Corporation

Marc Kemerer

Stremma Developments (St. George) Inc.

Michael Melling and Jamie Cole

Losani Homes (1998) Ltd.

Raj Kehar (for Denise Baker)

Riverview Highlands (St. George) Holdings Ltd.

James Hitchon

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. TOUSAW ON
FEBRUARY 19, 2020 AND ORDER OF THE TRIBUNAL**

[1] This hearing event is the fourth Case Management Conference (“CMC”) in respect of two appeals filed against an Official Plan Amendment (“OPA”) adopted by the County of Brant (“County”). Although the appeals originated under the previous Bill 139 legislative framework, both Appellants refiled their appeals after September 3, 2019 as permitted by Bill 108.

[2] The County adopted OPA 8 affecting the settlement area of St. George following the completion of the St. George Area Study and Addendum Report. Parkland Fuel Corporation appealed the OPA as it relates to propane facilities, and Stremma Developments (St. George) Inc. appealed the OPA as it relates to phasing and servicing.

[3] The Parties had requested on consent that this CMC be held by telephone conference call (“TCC”). The County advised that no-one appeared in person at the Municipal Office for this CMC. In addition to the Parties listed above, also on the call was the only Participant – Empire Communities (St. George) Ltd. – represented by its counsel, Paul DeMelo.

[4] In accordance with the Tribunal’s directions from the third CMC, the Parties had submitted on consent a draft Procedural Order (“PO”) with detailed Issues Lists and Agreed Statements of Fact for each appeal. The Tribunal also requested a joint document book, double-sided, for the hearing, to which the Parties helpfully suggested a separate document book for each appeal given the disparate nature of the appeals.

[5] The Parties requested that a 10-day hearing be scheduled. At the Tribunal’s request, the Parties agreed to amend the PO to provide the hearing work plan 45 days before the hearing to allow for the efficient use of the Tribunal’s calendar should any days be released from this hearing. The Parties discussed adjusting other exchange dates in the PO, now contained in the attached PO.

ORDER

[6] The PO is approved as set out in Schedule 1.

[7] The hearing will commence at **10 a.m.** on **Monday, November 9, 2020** for **nine days** at:

**County of Brant Municipal Building
Council Chambers
7 Broadway Street West
Paris, Ontario**

[8] No further notice will be given.

[9] This Tribunal Member is not seized for the hearing, but may be spoken to for case management purposes.

“S. Tousaw”

S. TOUSAW
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

SCHEDULE 1
Local Planning Appeal Tribunal

Procedural Order

The Tribunal orders that:

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

Organization of the Hearing

2. The hearing will commence on **November 9th, 2020** at 10:00am at **Council Chambers, County of Brant Municipal Building, 7 Broadway Street West, Paris, Ontario, N3L 2Z3**.
3. The length of the hearing will be **9** days. The Tribunal will not sit on November 11, 2020. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties are listed in **Attachment 1** to this Order. All parties shall attend the first day of the hearing. All parties (or their representatives) shall provide a mailing address, email address, and telephone number to the Tribunal. Any such person who retains a representative (legal counselor agent) subsequent to the case management conference must advise the other parties and the Tribunal of the representative's name, mailing address, email address and phone number.
5. The issues are set out in the Issues List attached as **Attachment 2**. Except for scoping or removing issues, there will be no changes to this list unless the Tribunal permits it. A party who asks for changes may have costs awarded against it.
6. The hearing will occur in two phases. The phasing and order of evidence shall be as listed in **Attachment 3** to this Order. The two phases will occur consecutively during the two-week hearing. A decision from the Tribunal on Phase 1 is not required in order to proceed with Phase 2. The Tribunal may limit the amount of time allocated for opening statements, evidence-in-chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.

Requirements Before the Hearing

7. All parties (or their representatives) shall provide a mailing address, email address, and telephone number to the Tribunal. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Tribunal of the representative's name, mailing address, email address and phone number.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the County Clerk a list of the witnesses and the order in which they will be called. This list must be delivered by **July 3, 2020**. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
9. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in item 11 below. Instead of an expert witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
10. 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 and his or her area of expertise, as in item 11 below.
11. On or before **July 31, 2020**, the parties shall provide copies of their witness and expert witness statements to the other parties and the County Clerk. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
12. On or before **August 14, 2020**, a participant shall provide copies of their written participant statement to the parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
13. On or before **August 28, 2020**, the parties shall provide copies of reply witness statements, if any, to the other parties and to the County Clerk.
14. On or before **September 11, 2020**, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Tribunal must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.

15. A person wishing to change written evidence, including witness statements, after witness statements and reply witness statements have been filed must make a written motion to the Tribunal.
16. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Tribunal and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.
17. The parties shall prepare and file a hearing plan with the Tribunal on or before **September 25, 2020** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.
18. The parties shall prepare a Joint Document Book to be filed with the Tribunal on the first day of the hearing. The Document Book shall be printed double-sided and bound. A paper copy of any document proposed to be entered into evidence or relied on shall be provided at the hearing unless ordered otherwise by the presiding Member.
19. Documents may be delivered by personal delivery, facsimile or registered or certified mail or email, or otherwise as the Tribunal may direct. The delivery of documents by fax and email 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.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rules apply to such requests.
21. A summary of the various filing dates is contained in **Attachment 4**.

This Member is not seized.

So orders the Tribunal.

ATTACHMENT 1

PARTIES & PARTICIPANTS

Parties

1. County of Brant

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2. Parkland Fuel Corporation

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3. Stremma Developments (St.George) Inc.

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4. Losani Homes (1998) Ltd.

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5. **Riverview Highlands (St. George) Holdings Ltd.**

James Hitchon

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Participants

1. **Empire Communities (St. George) Ltd.**

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ATTACHMENT 2

ISSUES LIST

Parkland Fuel Corporation

1. Is OPA 8 consistent with the Provincial Policy Statement:
 - (a) 2014, including policies 1.1, 1.2, 1.3, 1.4 and 3.0; and
 - (b) 2020, including policies 1.1, 1.2, 1.3, 1.4 and 3.0?
2. Does OPA 8 have appropriate regard to matters of provincial interest and subdivision control, Planning Act sections 2 and 51(24)?
3. Does OPA 8 conform to the County:
 - (a) Official Plan, including sections 1.11.2, 2.7, 3.11.3 and 3.12.3;
 - (b) Zoning By-law 61-16, including sections 3 and 11
4. Should section 2.8.9 be revised to read as follows: *The County recognizes that there are existing propane storage facilities in St. George and the importance of those uses/facilities to the County. It shall be the policy of the County to ensure that, notwithstanding any other policies of this Plan, development applications shall conform to the acceptable levels of public risk set out in Figure 3 of the Technical Standards and Safety Association Regulations and Guidelines for the Implementation of the Level 2 Risk and Safety Management Plan.*
5. Does OPA 8 represent good planning?

Stremma Developments (St.George) Inc.

1. Do the Appealed Policies conform with the *Growth Plan for the Greater Golden Horseshoe 2019* (the "**Growth Plan**"), in particular policies:
 - (a) 2.2.1.2 and 2.2.1.3(a), concerning growth management;
 - (b) 1.2.1, 2.1, 2.2.2.1, 2.2.2.3, 2.2.2.4, regarding intensification, and delineated built-up areas;
 - (c) 2.2.2.43(e), 3.2.1.2, 3.2.1.3, and 3.2.6.2, regarding infrastructure planning and investment to, among other things, support intensification; and
 - (d) 1.2.1, 2.1, 2.2.5.1, and 2.2.5.6, as they relate to employment lands?

2. Are the Appealed Policies consistent with the *Provincial Policy Statement, 2020* (the “*PPS*”), in particular policies:
 - (a) 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.5, and 1.1.3.7, regarding intensification, land use settlement patterns, and development phasing;
 - (b) 1.1.1, 1.1.3, 1.1.3.2, 1.2.1(a), 1.6.1, 1.6.6.1, and 1.6.6.2, regarding the optimization and efficient use of land and servicing infrastructure;
 - (c) 1.1.2, 1.4.1, and 1.7.1(b) regarding supply of housing;
 - (d) 1.6.6.3 and 1.6.6.4, regarding private servicing; and
 - (e) 1.3.1 and 1.3.2.1, regarding economic growth to support employment uses and areas?
3. Do the Appealed Policies inappropriately constrain growth and development in St. George, based on assumptions about municipal servicing capacity that preclude the ability to consider less-costly servicing solutions?
4. Do the Appealed Policies inappropriately limit the redevelopment potential of the Subject Lands? If the answer to this question is “yes”, does this amount to a down-designation? If so, is the down-designation appropriate?
5. Are the Appealed Policies premature in advance of the completion of a Municipal Comprehensive Review that will address how the County’s intensification targets and housing supply will be met?
6. Do the Appealed Policies conform with the County’s in-force Official Plan (the “**Official Plan**”), particularly policies 2.2.4, 2.2.4.1, 2.2.4.2 and 2.2.4.3 which govern the preparation, process and requirements for the completion of area studies in the County?
7. Are the Appealed Policies capable of being interpreted and applied harmoniously with existing Official Plan policies, in particular:
 - (a) 2.2.5, 2.2.5.1 and 2.2.5.2, which speak to density targets, intensification, fiscal impact, and the public interest; and
 - (b) 5.2.1, 5.2.3.1, 5.2.3.2, and 5.2.3.3, which speak to servicing hierarchy and requirements?
8. Do the Appealed Policies represent good planning in the public interest?

ATTACHMENT 3

ORDER OF EVIDENCE

1. Overview, Non-Opinion Evidence from the County

Phase 1 – Parkland Appeal

2. Parkland's Case
3. County's Case
4. Parkland in Reply
5. Argument

Phase 2 – Stremma Appeal

6. Stremma's Case
7. County's Case
8. Parties in Support of County
9. Stremma in Reply
10. Argument

ATTACHMENT 4

SUMMARY OF FILING DATES

EVENT	DATE
Parties to exchange their List of Witnesses	July 3, 2020
Parties to exchange their Witness and Expert Witness Statements	July 31, 2020
Participants Written Statements	August 14, 2020
Parties to exchange their Reply Witness Statements	August 28, 2020
Parties to exchange their Visual Evidence	September 11, 2020
Hearing Plan	September 25, 2020
LPAT hearing commences	November 9, 2020