

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



**ISSUE DATE:** November 21, 2018

**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:** October 3, 2018 in Paris, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

County of Brant

Jennifer Meader

Parkland Fuel Corporation

Marc Kemerer

Stremma Developments (St. George) Inc.

Michael Melling and Meaghan McDermid

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. TOUSAW AND K. J. HUSSEY ON OCTOBER 3, 2018 AND ORDER OF THE TRIBUNAL**

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## INTRODUCTION

[1] This hearing event is the first Case Management Conference (“CMC”) in respect of two appeals filed against an Official Plan Amendment (“OPA”) adopted by the County of Brant (“County”).

[2] The County adopted an OPA 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. (“Stremma”) appealed the OPA as it relates to phasing and servicing.

[3] Under the *Local Planning Appeal Tribunal Act* (“LPATA”), proclaimed on April 3, 2018, the Tribunal must convene a CMC with the appellants and the approval authority (s. 39(1)). The CMC must explore opportunities for settlement, mediation or other dispute resolution processes (s. 39(2)) and may also address such matters as additional parties, narrowing of issues, disclosure and scheduling the hearing (s. 33(1)). The Tribunal’s *Rules of Practice and Procedure, 2018* (“Rules”) establish mandatory matters to be considered at a CMC (Rule 26.20).

[4] At the outset of the hearing, persons requesting Party status were identified. However, arguments for status were not heard because the Decision to adjourn the CMC, due to incomplete notice as set out below, pre-empted discussion of other matters. The persons requesting status are noted below for reference at the next CMC.

### **Persons Requesting Party Status**

[5] The next CMC will consider requests for Party status filed in accordance with the LPATA.

[6] Persons who are not appellants and wish to seek status at the hearing must file written submissions containing the prescribed content at least 30 days before the CMC

(LPATA s. 40(1) and Rule 26.19). If an oral hearing is held on an appeal under s. 17(24) of the *Planning Act* (“PA”), only Parties may participate in the hearing (LPATA s. 42(1)).

[7] Denise Baker, counsel for Losani Homes (1998) Ltd. (“Losani”), filed written submissions and a certificate of service on September 4, 2018, requesting Party status. The Tribunal considers this service as being given 29 days before the CMC. Losani may wish to refile its submissions in accordance with the LPATA when Notice is given again as directed below.

[8] Kristie Jennings, counsel for Empire Communities (St. George) (“Empire”), filed a letter on October 2, 2018 requesting Participant status, based on the understanding that Empire had received notice but missed the 30 day submission date. However, upon learning that notice had not been received, Empire changed its request to Party status at the CMC. To request Party status, Empire will be required to file its submissions in accordance with the LPATA when Notice is given again as directed below.

[9] Henry Stolp, representing Riverview Highlands (St. George) (“Riverview”), indicated his likely intent to seek Party status. Like the above potential parties, Riverview will have an opportunity to file the required submissions when Notice is given again.

[10] No other non-appellants identified an interest to participate.

### **Adjournment**

[11] Notice of a hearing is required to be given in accordance with the Tribunal’s direction (PA s. 17(44)). The Tribunal requires notice of a CMC to be given 75 days before the hearing event, in part to provide sufficient time for persons to comply with the filing requirements noted above (Rule 26.18).

[12] The County advised that a problem with notice had been discovered. There is a discrepancy between the Tribunal's instructions and the persons actually notified. The Tribunal instructed that notice be given, in addition to the appellants, to persons who requested notice of the hearing and to persons on a list associated with the County's transmittal letter. The County gave notice according to its mailing list for the file, but later discovered that several persons requiring notice had been omitted, including ministries, legal firms, planning consultants, and development interests.

[13] All counsel present took no position on a potential adjournment resulting from improper notice, other than counsel for Stremma who submitted that notice of a second CMC could be given while also continuing with this CMC for the parties in attendance.

[14] The Tribunal adjourned the CMC on the basis that incomplete notice is fatal to the matter continuing today. The County adopted an extensive OPA that attracted significant interest and participation over several years of background studies and preparation of the OPA. Some of the persons who were required to be notified of the appeal hearing did not receive notice. Only they can determine their interest in these proceedings, and such determination cannot be made without awareness of the appeals and hearing events. To proceed with the CMC with only the Parties present would prevent the potential involvement of those not present in the various determinations to be made at a CMC in accordance with the legislation.

[15] The absence of notice to certain persons breaches a fundamental principle of natural justice, for which, fortunately, there is a ready remedy. Adjourning these proceedings to allow notice to be issued again in accordance with the Tribunal's direction, although extending the duration of the proceedings, is necessary for a "fair, just and expeditious resolution of the issues" (LPATA s. 33(1) and Rule 26.20(m)).

### **Notice of Postponement**

[16] The LPATA establishes time periods within which PA appeal Decisions must be made. For an appeal to an OPA adopted by a municipality, the appeal must be

disposed of within ten months after the day the appeal is validated (O. Reg. 102/18, s. 1(1)1). Time shall be excluded from the calculation of months for the time during an adjournment if the Tribunal determines the adjournment necessary for a fair and just determination of the appeal (ibid, s. 1(2)1). The Registrar may issue a Notice of Postponement at the direction of a Member (Rule 3.02).

[17] In this case, notice was incomplete and must be re-issued to ensure that all required persons are aware of the appeals and afforded the opportunity to file submissions within the legislated time periods. The Tribunal finds that, because the full 75 day notice period must be repeated, the Notice of Postponement will include the period of time commencing on the day the incomplete notice was given, being July 19, 2018, and will end on the day the new notice is issued by the County.

#### **ORDER**

[18] The Tribunal orders that this CMC is adjourned, and that a second CMC will be held on a date to be set by the Tribunal with notice to be given in accordance with the Tribunal's direction.

[19] The Tribunal orders that a Notice of Postponement is in effect for the period from July 19, 2018 to the day Brant County issues notice for the second CMC event.

*"S. Tousaw"*

S. TOUSAW  
MEMBER

*"K. J. Hussey"*

K. J. HUSSEY  
VICE-CHAIR

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**Local Planning Appeal Tribunal**

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