

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



ISSUE DATE: January 03, 2019

CASE NO(S): PL180548

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: Brown Wharf Development Corp. et al
Appellant: Fengate Hamilton Lands GP Inc. et al
Subject: Proposed Official Plan Amendment No. OPA
102
Municipality: City of Hamilton
LPAT Case No.: PL180548
LPAT File No.: PL180548
LPAT Case Name: Brown Wharf Development Corp. et al v.
Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Brown Wharf Development Corp. et al
Appellant: Fengate Hamilton Lands GP Inc. et al
Appellant: Victor Veri
Subject: By-law No. BL 18-114
Municipality: City of Hamilton
LPAT Case No.: PL180548
LPAT File No.: PL180549

Heard: November 22, 2018 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Brown Wharf Development Corp. et al. Richard Minster and Daniel Rosman

Fengate Hamilton Lands GP Inc. et al. Patrick Harrington

City of Hamilton Joanna Wice

**MEMORANDUM OF ORAL DECISION DELIVERED BY HELEN JACKSON AND
HUGH S. WILKINS AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This Case Management Conference (“CMC”) was held in regard to appeals of the passing of Official Plan Amendment 102 (“OPA 102”), which is the City of Hamilton (the “City”) Downtown Secondary Plan, and Zoning By-law No. 18-112 that amends the Hamilton Zoning By-law No. 05-200. A CMC is legislatively required for appeals that come to the Local Planning Appeal Tribunal (the “Tribunal”) and are heard under the *Local Planning Appeal Tribunal Act 2017* (“LPAT Act”) and its regulations, and the *Planning Act* as they read on April 3, 2018.

[2] The LPAT Act requires certain matters to be addressed during the CMC, which are laid out in Rule 26.20 of the Tribunal’s *Rules of Practice and Procedure* (the “Rules”). In summary, these are as follows:

- a) Identify persons who wish to participate in the appeal, based on written submissions;
- b) Determine whether these persons may participate;
- c) Identify facts or evidence the parties may agree upon;
- d) Identify, define or narrow the issues;
- e) Examine persons to obtain admissions that may simplify the hearing, as part of the CMC;

- f) Provide directions for disclosure;
- g) Provide directions for persons to attend to be examined by the Tribunal;
- h) Discuss opportunities for settlement including mediation;
- i) Fix the hearing date, place and estimated length;
- j) Determine if the hearing should be in writing or be an oral hearing, and any applicable dates to exchange documents or submissions;
- k) Discuss issues of confidentiality, if any;
- l) Discuss the preparation of joint document books; and
- m) Discuss any other matters that may assist in a fair, just and expeditious resolution of the issues or proceeding.

[3] The Tribunal has three valid appeals before it in relation to OPA 102 and Zoning By-law No. 18-112. They are the appeals brought by:

- Brown Wharf Development Corp. and Southwest Crossings Limited (“Brown Wharf”);
- Fengate Hamilton Lands GP Inc. and LPF Hamilton Lands LP (“Fengate Hamilton”); and
- Victor Veri.

[4] The Tribunal entered into evidence as Exhibit 1 the Affidavit of Service of Notice of this CMC, filed by the City.

Victor Veri Appeal

[5] The Tribunal was advised that Mr. Veri passed away on August 28, 2018. No person attended this CMC in relation to this appeal. Ms. Wice indicated that the City

has contacted the Trustee of Mr. Veri's estate, Elbert Van Donkersgoed, in regard to this appeal and to the date of the CMC, has not received any reply. Mr. Veri appealed the passage of Zoning By-law No. 18-112, but not OPA 102.

[6] The City requests that the Tribunal dismiss the Victor Veri appeal. The Tribunal directed the City to file a motion in accordance with the Tribunal's Rules to that end.

Fengate Hamilton Appeal

[7] Fengate Hamilton's appeal is a site specific appeal related to its property, as described by Mr. Harrington, and as outlined in the Case Synopsis and the Appeal Record submitted for this CMC. The Tribunal asked Mr. Harrington to address each of the matters to be canvassed in a CMC under Rule 26.20 during his submissions.

[8] Mr. Harrington indicated that since the filing of the appeal, Fengate Hamilton has had discussions with the City and has further scoped its appeal. He stated that the issues in his client's appeal have been narrowed to that of 'no new net shadow on Prince's Square'. He indicated that his client wishes to continue without prejudice settlement discussions with the City. He requested that the Tribunal adjourn the CMC to allow Fengate Hamilton and the City the opportunity to continue those negotiations, and that the Tribunal issue a Notice of Postponement for this purpose. Mr. Harrington submitted that any further scoping of the issues at this point may act to preclude other methods of resolving the dispute.

[9] The City submitted a Responding Record to the Fengate Hamilton appeal and in oral submissions agreed that it is appropriate to adjourn the CMC to allow the parties to continue to discuss the one remaining issue.

[10] Ms. Wice advised the Tribunal that should the matter progress to a contested hearing, the City would file a motion requesting that any affidavit evidence be struck from the record. It is the City's position that the provision of affidavit evidence is

contrary to the LPAT Act and she referenced the stated case before the Divisional Court in which questions regarding evidence and examining witnesses will be considered. She submits that it is necessary for these questions to be determined by the Court before the Tribunal should accept evidence in this current matter.

Brown Wharf Appeal

[11] Brown Wharf's appeal is also a site specific appeal, as outlined in its Case Synopsis and Appeal Record submitted for this CMC. Mr. Minster indicated that due to logistical issues, his client has not had the opportunity to pursue settlement negotiations with the City, but wishes to do so. He indicated that his client's issues relate to height. It is his client's view that its property is in an appropriate location for taller buildings in line with the intensification goals of the Provincial Policy Statement, 2014 and the Growth Plan for the Greater Golden Horseshoe, 2017 planning documents. Mr. Minster indicated that following settlement discussions with the City, his client would be in a position to outline the specific issues that are to be addressed should the matter proceed to a contested hearing.

[12] Ms. Wice indicated that the City is amenable to engaging in settlement discussions with Brown Wharf and submits that it is appropriate to adjourn the CMC to allow the parties the opportunity to engage in settlement discussions.

[13] Ms. Wice indicated that, similar to the Fengate Hamilton appeal, should this matter advance to a contested hearing it is the City's view that the affidavit evidence that has been provided by Brown Wharf should be struck.

Other Matters

[14] Ms. Wice submitted that, should it be necessary, the Fengate Hamilton and the Brown Wharf appeals could advance to a contested hearing separately, given that the two appeals are site specific and do not engage the same issues.

[15] The City indicated that should the Victor Veri appeal be dismissed, then the City would like the Tribunal to deem the uncontested portions of OPA 102 and Zoning By-law No. 18-112 to come into effect; with the exception of the two remaining appeals which are both site-specific. The Tribunal directed the City to file a motion pursuant to the Tribunal's Rules should it seek to bring into force and effect the uncontested portions of OPA 102 and Zoning By-law No. 18-112.

ANALYSIS AND FINDINGS

[16] The Tribunal is satisfied that pursuant to the direction provided in s. 39(2) of the LPAT Act, and Rule 26.20 (h), it is appropriate to adjourn the CMC for the appeals of Fengate Hamilton and Brown Wharf for the purposes of active settlement discussions. On that basis, the Tribunal has issued a Notice of Postponement of this appeal, which is appended here as Attachment 1.

[17] The Tribunal directs the parties to attend a Telephone Conference Call ("TCC") to provide a status update on the settlement discussions for the Fengate Hamilton and Brown Wharf appeals. The Tribunal at that time will determine whether to schedule a further in person CMC and will determine details regarding disposing of any motions that are received. When the CMC is resumed any outstanding requirements of Rule 26.20 will be addressed.

ORDER

[18] The Tribunal has scheduled a status update to be held by TCC. It is scheduled for **Thursday, March 7, 2019 at 9 a.m.** The call in numbers are as follows: **(416) 212-8012** or Toll Free **1 (866) 633-0848** at the correct time. When prompted, enter the **code 4779874#** to be connected to the call.

[19] No further notice will be given.

[20] This Panel of the Tribunal is seized of the next TCC.

"Helen Jackson"

HELEN JACKSON
MEMBER

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

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

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

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



ISSUE DATE: December 12, 2018

CASE NO.: PL180548

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

Appellant: Brown Wharf Development Corp. et al
Appellant: Fengate Hamilton Lands GP Inc. et al
Subject: Proposed Official Plan Amendment No. OPA 102
Municipality: City of Hamilton
LPAT Case No.: PL180548
LPAT File No.: PL180548
LPAT Case Name: Brown Wharf Dev. Corp et al v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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Subject: By-law No. BL 18-114
Municipality: City of Hamilton
LPAT Case No.: PL180548
LPAT File No.: PL180549

BEFORE:

H. JACKSON
MEMBER

HUGH S. WILKINS
MEMBER

) Wednesday, the 12th
)
) day of December, 2018

NOTICE OF POSTPONEMENT

The Tribunal hereby orders that the time periods applicable to the proceedings under subsections 17(24) and 34(19) of the *Planning Act* and as specified in Ontario Regulation 102/18, enacted under the *Local Planning Appeal Tribunal Act, 2017* are hereby postponed effective from Thursday, November 22, 2018 and pursuant to the authority provided for in s. 1(2)1(ii) of the said Regulation.



REGISTRAR

If there is an attachment referred to in this document,
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