

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



**ISSUE DATE:** May 13, 2019

**CASE NO(S):** PL180816

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: 1583618 Ontario Ltd. & Wilstar Management Ltd.  
Subject: Proposed Official Plan Amendment No. OPA 113  
Municipality: City of Hamilton  
OMB Case No.: PL180816  
OMB File No.: PL180816  
OMB Case Name: 1583618 Ontario Ltd. v. Hamilton (City)

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

Appellant: 1583618 Ontario Ltd. & Wilstar Management Ltd.  
Subject: By-law No. BL 18-0257  
Municipality: City of Hamilton  
OMB Case No.: PL180816  
OMB File No.: PL180817

**Heard:** May 1, 2019 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

1583618 Ontario Ltd. and Wilstar  
Management Ltd.

Pitman Patterson

City of Hamilton

Patrick MacDonald

Plaza Imports Limited

Patrick Harrington

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON  
MAY 1, 2019**

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**INTRODUCTION**

**The Planning Amendments and the Context**

[1] This hearing event before the Local Planning Appeal Tribunal (the “Tribunal”) was the first Case Management Conference (“CMC”) with respect to the appeals by 1583618 Ontario Ltd. and Wilstar Management Ltd. (the “Appellants”) against Urban Hamilton Official Plan Amendment 113 (“OPA 113”) adopted by the Council of the City of Hamilton (the “City”) and its implementing zoning amendment enacted as By-law No. 18-0257 (the “Zoning Amendment”).

[2] OPA 113 and the Zoning Amendment emanate from applications for official plan amendment and zoning amendment filed by Plaza Imports Limited (the “Applicant”) with respect to the lands at 925 Main Street West and 150 Longwood Road South (the “development site”), which two addresses are two contiguous parcels that assembled would function as a corner property at the intersection of Main Street West and Longwood Road South. The record indicates that 150 Longwood Road South is owned by the City but is in a process leading to acquisition by the Applicant.

[3] The Applicant is the owner and operator of what is known as Columbia International College, which is located at 1008 Main Street West (the “College Lands”). The College Lands accommodate a two storey school building and a sports field to the rear of the site. Further west along Main Street West is a five storey residence building and a two storey classroom building associated with the College.

[4] The Appellants are the owners, and property managers, of lands municipally known as 981 and 1001 Main Street West (the “Appellants’ Lands”). The Appellants’ Lands are improved with two twelve-storey purpose-built rental apartment buildings containing 470 units in the aggregate, and a range of one, two and three bedrooms. These buildings are said to house a diverse population of families, seniors, professionals and students.

[5] The development proposal of the Applicant is to construct upon the development site a mixed use building consisting of a four storey podium with commercial uses at grade and a lodging house/student residence above in two towers, one having a height of 18 storeys (62 metres in maximum height) and the other having a height of 16 storeys (56 metres in maximum height). It is intended to yield a 1,024 bed (514 unit) student-oriented lodging house, with vehicle and bicycle parking in an underground facility and 1,420 square metres of commercial floor area.

[6] The filed material describes Columbia International College as currently Canada’s largest private junior and senior boarding school with nearly 2,000 students originating from over 70 countries.

[7] The Appellants’ Lands lie immediately between the College Lands and the development site.

[8] According to the filed material, the Appellants have been regularly experiencing trespass and loitering on the Appellants’ Lands by staff and students from the College, with resultant disturbance to the occupants of the Appellants’ Lands and to the lands in the form of discarded trash.

### **Request by the Applicant for Party Status**

[9] In accordance with the requirements of s. 40 of the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”), the Applicant prepared and made a written submission to

the Tribunal requesting party status in the proceeding.

[10] Due to the Applicant's interest in the lands, being the person who made the applications for amendment, and being responsible for having its consultants prepare the necessary justification and supporting reports as a foundation for the amendments, the Tribunal indicated its view that such a person has a substantial stake in the matter and would be in a position to provide assistance to the Tribunal in the adjudication of the matter. The Applicant would thus typically be accorded party status.

[11] The City did not oppose party status being granted to the Applicant.

[12] On behalf of the Appellants, their counsel, Pitman Patterson, acknowledged that it would be entirely appropriate for the Applicant to have party status but submitted that the Tribunal should defer dealing with that request until a subsequent stage of the proceeding. The explanation for this related to the language in s. 40(4) of LPATA, which authorizes the Tribunal to make a determination as to who may participate as "an additional party" or otherwise participate in the appeal on such terms as the Tribunal may determine. There seemed to be some suggestion that Mr. Patterson may, in the future, seek the imposition of terms on the participation of the Applicant.

[13] The Tribunal was satisfied that the Applicant had a substantial connection to the matter under scrutiny in the appeals and that the Applicant would be in a position to assist the Tribunal in a substantial manner as to the background and the statutory tests which the appeal would have to address. The basis for the caution which Mr. Patterson was pressing was not manifest to the Tribunal.

[14] There was an additional reason supporting the grant of party status to the Applicant, which will be addressed in the immediately following paragraphs.

[15] The Tribunal granted party status to the Applicant.

## **Opportunities for Settlement**

[16] Section 39(2) of LPATA requires the Tribunal, regarding official plan and zoning appeals, at the CMC, to take up discussion of opportunities for settlement.

[17] Mr. Patterson advised that they were well on their way to a settlement and that there were draft Minutes of Settlement in circulation. Patrick Harrington confirmed these assertions. Upon questioning by the Tribunal, it emerged that the Minutes of Settlement are between the Applicant and the Appellants. The City is not a party to that document.

[18] Patrick MacDonald, through the City filings, and based upon his submissions at the CMC, essentially indicated that the City expects the Applicant to take the lead in dealing with the appeal and defending the enactments of City Council.

[19] The Tribunal received these submissions and commended counsel to continue their discussions with a view to achieving a full resolution of the appeals.

[20] Clearly, if a settlement is achieved amongst all of the three parties, the Tribunal has authority to dispose of the matter on the basis of the settlement, provided that all statutory requirements and the public interest are satisfied.

### **The *Rail Deck Case (Canadian National Railway Company v. Toronto (City), 2018 CanLII 102206 (ON LPAT))***

[21] All three parties were in concurrence that, if the appeals are not settled, the hearing should not be scheduled until the decision of the Divisional Court in the *Rail Deck Case* has been rendered, as this may impact the treatment of the evidence and filings in this appeal.

[22] The directions which have been sought from the court by way of the stated case

address fundamental issues with respect to the matter of affidavit evidence and the question of cross-examination on such affidavits, as well as any evidence which may be adduced at the instance of the Tribunal by requiring the attendance of witnesses before the Tribunal at the hearing.

[23] There are many instances now of hearings being deferred pending the issuance of the court's disposition on the application which is before it in the *Rail Deck Case*.

[24] This panel of the Tribunal assented to the requested deferral of the scheduling of the hearing in this matter pending the issuance of the court's disposition.

[25] The Tribunal determined that following the court's disposition, counsel in this matter should conduct a discussion as to the impact of that decision on the issues in these appeals and any effect on the procedure which has been, or may be, followed regarding the receipt of evidence in this proceeding. Counsel should then contact the case coordinator at the Tribunal to canvas a date and time for the scheduling of a Telephone Conference Call ("TCC") amongst the Parties and this Member.

[26] The intention is that the matter of scheduling the hearing of these appeals would be addressed on the TCC as well as any procedural matters that are attendant upon the requirements of LPATA and the Tribunal's *Rules of Practice and Procedure* in light of the direction from the court regarding same.

[27] The fixing of the date for the TCC should be beyond the last date for the seeking of leave to appeal the court decision, so that the Tribunal and the Parties know whether there will be pursuit of an appeal of that decision or not.

[28] In any event, the TCC should be scheduled no later than six months from the issuance of this disposition.

[29] The Tribunal, in aid of the most effective use of the TCC, requests that counsel

submit an agenda in advance of the call setting out the matters to be addressed on the TCC, along with any material that may be apposite in that regard.

### **Timeline under Ontario Regulation 102/18**

[30] In light of the importance of the Divisional Court decision to the conduct of any hearing which may proceed with respect to these appeals, under the authority of s. 1(2).1.ii of Ontario Regulation 102/18, the Tribunal will exclude from the calculation of months in s. 1(1) of that Regulation the time from the CMC hearing until the Tribunal has commenced a hearing of the appeals, in order to secure a fair and just determination of the appeals.

### **Calling of Witnesses by the Tribunal**

[31] The Tribunal indicated to counsel that, at this juncture, the Tribunal has no intention of calling witnesses for questioning by the Tribunal at any potential oral hearing. The Tribunal, however, reserves judgment in that regard to the extent that any direction from the Divisional Court may affect the filings in this appeal proceeding.

[32] There being no further matters to address, the CMC was adjourned.

[33] The Tribunal orders the determinations and directions which are embodied in this Decision.

*“Gerald S. Swinkin”*

GERALD S. SWINKIN  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

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Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248