

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



**ISSUE DATE:** August 06, 2019

**CASE NO(S):** PL190004

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 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Homes by DeSantis (Downtown) Inc.
Subject:	Request to amend the Official Plan – Failure of the Town of Grimsby to adopt the requested amendment
Existing Designation:	Downtown Main Street
Proposed Designated:	Site specific exception
Purpose:	To permit the development of a four storey mixed-use building
Property Address/Description:	21, 23 Main Street East and 6 Doran Avenue
Municipality:	Town of Grimsby
Approval Authority File No.:	26OP-16-1703
LPAT Case No.:	PL190004
LPAT File No.:	PL190004
LPAT Case Name:	Homes by DeSantis (Downtown) Inc. v. Grimsby (Town)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Homes by DeSantis (Downtown) Inc.
Subject:	Application to amend Zoning By-law No. 14-45 – Refusal or neglect of the Town of Grimsby to make a decision
Existing Zoning:	Downtown Main Street (DMS) Zone
Proposed Zoning:	Site Specific Downtown Main Street (DMS) Zone
Purpose:	To permit the development of a four storey mixed-use building
Property Address/Description:	21, 23 Main Street East and 6 Doran Avenue
Municipality:	Town of Grimsby

Municipality File No.: 26Z-16-1710  
LPAT Case No.: PL190004  
LPAT File No.: PL190005

**Heard:** July 11, 2019 in Grimsby, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Town of Grimsby (“Town”)

John Doherty  
Jonathan Minnes

Homes by DeSantis (Downtown) Inc.  
 (“Applicant/Appellant”)

Calvin Lantz

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON JUNE 11, 2019 AND ORDER OF THE TRIBUNAL**

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**CASE MANAGEMENT CONFERENCE - INTRODUCTION**

[1] This Decision and Order is issued following the Case Management Conference (“CMC”) conducted pursuant to s. 33(1) of the *Local Planning Appeal Tribunal Act, 2017* (“LPATA”) and Rules 26.17 to 26.26 of the Tribunal’s *Rules of Practice and Procedure* (“Tribunal Rules”) for the Appeals brought in the above-referenced LPAT Case Files (the “Appeals”).

[2] The Appeals before the Tribunal have been brought pursuant to s. 22(7) and s. 34(11) of the *Planning Act* (“Act”) by the Applicant/Appellant, for the failure of the Town to make a decision on amendments to the Town’s Official Plan and Zoning By-law.

[3] The subject property is municipally known as 21, 23 Main Street East and 6 Doran Avenue (the “Property”). The Property is currently vacant.

[4] The Affidavit of Service of the Notice of the CMC is marked and filed as Exhibit

1a.

[5] Surrounding uses include one- and two-storey buildings with commercial uses at grade to the west, south and southeast along Main Street East and Ontario Street. To the north and northwest of the property, along Doran Avenue, are low and medium density residential uses in single detached dwellings and fourplexes. St. Joseph Catholic Elementary School is located to the northeast of the subject property.

[6] In the original application, the amendments were intended to permit the development of an eight-storey mixed use building with 86 residential units distributed among the top seven floors, together with commercial uses at grade. In response to feedback received from Town staff and the public, the Applicant/Appellant submitted a revised development scheme, which featured a reduced building height of four storeys along Main Street East, with 92 residential units and commercial frontage along Main Street East (the “revised proposal”). The subject property slopes down from Main Street to Doran Avenue. As a result, the amendments to the Official Plan also include site specific policy permitting residential apartments on Doran Avenue on the same level as the one-storey commercial units fronting on Main Street. In addition, given the difference in the elevation of land, the portion of the building fronting along Doran Avenue will have what the Applicant/Appellant refers to as a “notional fifth storey”.

[7] As a result of the revisions to the application, the Applicant/Appellant circulated a Supplemental Affidavit of Service of the Notice of the CMC which is marked and filed as Exhibit 1b.

[8] During the CMC, the Tribunal briefly discussed the changes to the planning appeal system that came into force on April 3, 2018 with the enactment of Bill 139. The changes include limits on the grounds for appeal for certain planning instruments including appeals of amendments to Official Plans and Zoning By-laws pursuant to s. 17(40) and s. 34(19) of the Act. Appeals under these sections must be made on the basis that the amendments are inconsistent with a policy statement under s. 3(1) of the Act, fail to conform with or conflict with a provincial plan or fail to conform with an

applicable official plan. In addition, those seeking status, other than the Appellants and the relevant municipality and approval authorities, must apply in writing at least thirty days before the CMC.

## **REQUESTS TO PARTICIPATE IN THE HEARING**

[9] In accordance with the Act, the Tribunal received written submissions and requests to participate in the hearing of the Appeals from the following persons:

(a) Alvin Melville

[10] Mr. Melville owns property abutting the subject property. After hearing submissions from Mr. Melville, the Applicant/Appellant and the Town, the Tribunal granted participant status to Mr. Melville.

[11] Mr. Melville's submission to the Tribunal, received June 10, 2019 was marked and filed as Exhibit 2.

## **MOTIONS**

[12] The Town forwarded a Motion Record, sworn June 27, 2019 (marked and filed as Exhibit 3B), to the Tribunal in advance of the CMC. The grounds for the motion set out in the Town's Motion Record indicates the revised application submitted by the Applicant/Appellant requires a portion of a laneway known as Lane No. 313, which intersects the Property and is not owned by DeSantis (the "Laneway"). In the Town's staff report dated October 9, 2018 (P.A. 18-32), staff recommended a conditional approval of the applications subject to a number of conditions. At that time it had been assumed that the Town owned the Laneway and that a portion could be sold to the Applicant/Appellant. The Laneway would then terminate at the new property lot line. The Applicant/Appellant would also be required to provide an easement over the Property to allow vehicular access from the remainder of the Laneway north to Doran Avenue.

[13] On November 19, 2018 Town Council considered the recommendation for conditional approval but did not accept the recommendation.

[14] On December 14, 2018, the Applicant/Appellant filed an appeal with the Tribunal pursuant to s. 22(7) and s. 34(11) of the Act.

[15] A title search conducted by the Town's legal counsel disclosed that the lands within the Laneway were included in a transfer from William Augustus Cole to James Doran dated June 13, 1890 and registered on June 17, 1890 as Instrument number 751. Since that time, legal counsel has not located any transfers of the actual fee in the land to anyone. On March 25, 2003, the Land Registry Office determined it could not convert the Laneway to Land Titles due to conflict of ownership, and it created a parcel for the Laneway in Registry as a non-convert.

[16] The Town is taking the necessary legal steps to bring the necessary Superior Court Application to confirm the Town's ownership of the Laneway and bring it into the Land Titles system.

[17] Given the expectation that some time will be required to proceed with these steps, the Town argues that the applications are premature and is seeking an adjournment of this matter by way of a Notice of Postponement issued by the Tribunal in accordance with Rules 3.02 and 17.05 of the Tribunal Rules. Once the issue of ownership of the Laneway is addressed the appeal could be resumed.

[18] The Town provided the Tribunal an Affidavit of Notice of Service for the Motion Record which was marked and filed as Exhibit 3a.

[19] The Applicant/Appellant provided a Response to the Motion by a letter emailed to the Tribunal on July 4, 2019 (the letter was marked and filed as Exhibit 3c). In this letter the Applicant/Appellant indicates they are not opposed to the Town's Request for an adjournment. The letter also indicates that the Applicant/Appellant agrees the ownership of the laneway is presently unclear but goes on to say that it may be that the

Applicant/Appellant has the better right to the lands at issue.

[20] The Tribunal is satisfied that setting a hearing date in this matter is premature until the issue regarding ownership of the Laneway is resolved. The Tribunal will issue a Notice of Postponement in this matter following the July 11, 2019 CMC.

### **MEDIATION AND SETTLEMENT**

[21] As required by s. 39(2) of the LPATA, at the CMC the Tribunal addressed with the parties the opportunities for settlement and the possibility of mediation as a means to resolve the Appeals. The parties advised that they have been in discussions but until the matter regarding the Laneway is resolved discussions with respect to mediation and settlement are premature.

### **FACTS, ISSUES, ADMISSIONS, DISCLOSURE**

[22] The Tribunal agreed with the parties that identifying facts or evidence that might be agreed upon and identifying the issues arising in the Appeals is premature until the ownership of the Laneway is resolved.

### **FORMAT OF HEARING**

[23] Upon a review of the Municipal Record, the Synopses filed by the Appellant/Appellant and the City and the respective Records of the parties, and given that settlement negotiations are ongoing between the parties, the Tribunal has not yet determined what format the hearing will take.

### **FURTHER CMC**

[24] The panel asked the parties for an estimate on the amount of time they thought might be required to address the issue regarding ownership of the Laneway. The parties could not provide a specific timeline but indicated that they would like to proceed with

the necessary steps in short order. On consent, the parties asked for a telephone conference call (“TCC”) to be held in approximately three months, so that a status update could be provided to the Tribunal.

[25] A further CMC to be conducted by TCC was scheduled for **Thursday, October 24, 2019**, commencing at **9 a.m.** Parties will call in to **1-866-633-0848** or **416-212-8012** and at the prompt enter TCC **code 4779874#**.

### **NOTICE OF POSTPONEMENT**

[26] Given the challenges in proceeding with the requirements for a CMC under Rule 26.20 of the Tribunal Rules until the matter respecting ownership of the Laneway is resolved, pursuant to s. 1(2) of Ontario Regulation 102/18 of the LPATA, in the opinion of the Tribunal it is necessary to postpone the time frame provided for in order to secure a fair and just determination of the Appeals. A Notice of Postponement shall accordingly be issued by the Tribunal.

### **ORDER**

[27] No further notice will be given.

[28] The panel for this CMC shall remain seized for the purposes of continuing case management and the conduct of the further CMC.

[29] The Tribunal orders as directed above.

*“John Douglas”*

JOHN DOUGLAS  
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**

A constituent tribunal of Tribunals Ontario - Environment and Land Division  
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