

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



**ISSUE DATE:** February 18, 2020

**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

Property Address/Description:	mixed-use building 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:** October 24, 2019 and January 31, 2020 by Telephone Conference Calls

### **APPEARANCES:**

#### **Parties**

Homes by DeSantis (Downtown) Inc.

Town of Grimsby

#### **Counsel**

Calvin Lantz  
Jonathan Cheng

John Doherty  
Jonathan Minnes

### **MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON OCTOBER 24, 2019 and JANUARY 31, 2020 AND ORDER OF THE TRIBUNAL**

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[1] This Decision and Order is issued following Case Management Conferences (“CMC”s) held by Telephone Conference Calls (“TCC”) on October 24, 2019 and January 31, 2020, with respect to appeals made to the Local Planning Appeal Tribunal (the “Tribunal”) pursuant to s. 22(7) and s. 34(11) of the *Planning Act* (the “Act”) by Homes by DeSantis (Downtown) Inc. (“Applicant/Appellant”) for the failure of the Town of Grimsby (“Town”) to make decisions on applications to amend the Town’s Official Plan (“OP”) and Zoning By-law (“ZBL”) for property located at 21 and 23 Main Street East and 6 Doran Avenue (the “subject property”).

[2] 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”).

[3] The subject property slopes down from Main Street to Doran Avenue. As a result, the amendments to the OP 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”.

[4] The subject property is currently vacant. Surrounding land 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.

[5] As noted in the decision for the first CMC held July 11, 2019, at the time they were submitted, the appeals in this matter were subject to *Local Planning Appeal Tribunal Act* (“LPATA”) and the Act as amended by Bill 139.

[6] With the proclamation of Bill 108 on September 3, 2019, both LPATA and the Act were amended. Pursuant to Ontario’s Transitional Regulations (“O. Reg.”) 296/19 and 303/19, the Parties agreed, given that a hearing date had not been set prior to September 3, 2019, that a hearing of the appeals in this matter would proceed according to LPATA and the Act as amended by Bill 108.

[7] At the first CMC, the Town advised the Tribunal that the revised application submitted by the Applicant/Appellant requires a portion of a laneway known as Lane No. 313 (the "Laneway"), which intersects and crosses a portion of the subject property but is not owned by the Applicant/Appellant. In the Town's staff report dated October 9, 2018 (P.A. 18-32), staff recommended conditional approval of the applications subject to a number of conditions. At the time that the staff report had been written, 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 property lot line of the subject property.

[8] A title search by the Town revealed that ownership of the Laneway, including that portion of the Laneway proposed to be acquired by the Applicant is in question. The Town and the Applicant/Appellant are seeking to address the issue of Laneway title through the Superior Court of Ontario. At the time of the second CMC held October 24, 2019, little progress had been made in that regard.

[9] At the second CMC, the Applicant requested that a hearing date be set in this matter. The Tribunal advised that it would not set a hearing date without a draft Procedural Order ("PO") and an Issues List ("IL").

[10] At the request of the parties, a third CMC was scheduled and conducted by TCC on Friday, January 31, 2020.

[11] In advance of the third CMC the parties provided the Tribunal with a PO and IL.

[12] At the TCC on January 31, 2020, the Parties provided the Tribunal with an update on the Laneway title issue advising, based on a timetable directed by the Superior Court, that a hearing on the title issue would be held on May 18, 2020.

[13] The PO and IL were discussed at the TCC. The Tribunal asked, based on the IL provided, how many witnesses the Parties expected to call. The Parties said they expected to call three witnesses each, a land use planner, urban designer and a cultural heritage expert. The Parties requested that a 10-day hearing be scheduled in mid-January 2021 to allow sufficient time for the issuance of the Superior Court decision on the title for the Laneway, and subsequent discussions between the parties.

[14] The parties also requested that a fourth CMC be scheduled approximately 90 days in advance of the hearing date. The Parties advised they plan to continue ongoing discussions towards settlement. The purpose of a fourth CMC would be to provide the Tribunal with a status update regarding the Superior Court decision, and any progress made in discussions between the parties which might result in a scoping of the IL.

[15] The Tribunal asked if the Parties had considered Tribunal-led mediation. The Parties responded there may be interest, but they want to review the decision of the Superior Court on the Laneway before they make a decision to request mediation. If the Parties wish to pursue Tribunal-led mediation, they will make a formal request through the Tribunal's Case Coordinator.

[16] A date for a fourth in-person CMC was scheduled to commence at **10 a.m.** on **Tuesday, October 20, 2020** in:

**Council Chambers  
Grimsby Town Hall  
160 Livingston Avenue  
Grimsby, Ontario**

[17] The Parties are directed to submit a draft Hearing Plan, consistent with the sample Hearing Plan available on the Tribunal's website, to the Tribunal by no later than **Tuesday, October 13, 2020**.

[18] The Tribunal advised that nine days would be available for a hearing in January not the 10 days requested. The parties advised that they think nine days should be sufficient. A nine-day hearing was scheduled commencing at **10 a.m. on Tuesday, January 19, 2021** in:

**Council Chambers  
Grimsby Town Hall  
160 Livingston Avenue  
Grimsby, Ontario**

[19] The parties were directed to provide the Tribunal with a revised draft PO to reflect the hearing dates scheduled at the third CMC by no later than **Friday, February 14, 2020**.

[20] No further notice will be given for either the October 20, 2020 CMC or for the nine-day contested hearing.

[21] The Panel Member for this CMC is not seized but may be contacted for case management purposes.

[22] 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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