

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



ISSUE DATE: February 12, 2021

CASE NO(S):

PL200364

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:	Transmetro Limited
Subject:	Request to amend the Official Plan - Failure of Town of Orangeville to adopt the requested amendment
Existing Designation:	Employment Area
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit four (4), six (6) storey mixed-use buildings
Property Address/Description:	Block 94 and 98, Plan 7M-70
Municipality:	Town of Orangeville
Approval Authority File No.:	OPZ 3/19
LPAT Case No.:	PL200364
LPAT File No.:	PL200364
LPAT Case Name:	Transmetro Limited v. Orangeville (Town)

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

Applicant and Appellant:	Transmetro Limited
Subject:	Application to amend Zoning By-law No. 22-90 - Refusal or neglect of Town of Orangeville to make a decision
Existing Zoning:	General Industrial Zone (M1)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit four (4), six (6) storey mixed-use buildings.
Property Address/Description:	Block 94 and 98, Plan 7M-70
Municipality:	Town of Orangeville
Municipality File No.:	OPZ 3/19
LPAT Case No.:	PL200364
LPAT File No.:	PL200365

Heard: February 3, 2021 by video hearing

APPEARANCES:

Parties

Transmetro Limited

Town of Orangeville

Sarah Properties Inc.

Counsel

M. Keating

A. Biggart

S. Ferri

MEMORANDUM OF ORAL DECISION DELIVERED BY M. RUSSO AND D. CHIPMAN ON FEBRUARY 3, 2021 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Transmetro Limited (the "Applicant") has proposed a development featuring four 6-storey buildings totalling 40,533.7 square metres of gross floor area, which are comprised of 2,215 square metres of commercial gross floor area and 383 residential units. Two of the buildings will feature ground floor commercial uses while two of the buildings will be entirely residential. A total of 594 parking spaces will be provided to the rear of the four buildings with one level of underground parking (the "Proposal").

[2] In order to facilitate the Proposal, the Applicant submitted applications to amend the Town of Orangeville's (the "Town") Official Plan (the "OP") and Zoning By-law on their lands, municipally known as Blocks 94 and 98, Plan 7M-70, in the Town. These applications were deemed complete by the Town as of July 2, 2019. Having not been provided a decision on the applications by Town Council, the Applicant has exercised its statutory right to appeal to the Tribunal, due to the failure of the Town to make a decision within the statutory timelines, pursuant to subsections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. p. 13.

[3] The Tribunal held this first Case Management Conference (“CMC”) as required by s. 33.1 of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1, as amended. Marisa Keating, counsel for the Applicant, provided notice of the CMC in accordance with the Tribunal’s direction, on December 16, 2020 and a subsequent notice on December 23, 2020 with additional names added to the mailing list. The Tribunal marked the Affidavits of Service as Exhibit 1a and 1b.

[4] The Tribunal received one written request for Party Status on behalf of Sarah Properties Inc. (“Sarah Properties”). Steven Ferri, counsel for Sarah Properties informed the Tribunal that the Proposal shares a common north boundary, via Hanson Boulevard with his client’s property and similar OP and zoning designations. Mr. Ferri stated that his client will be seeking similar amendments on their lands from the Town, and therefore Sarah Properties maintains interests and issues akin to those held by the Applicant. Those issues and interests exhibit a genuine interest about the outcome of the appeal. No objections were raised. On that basis, the Tribunal granted party status to Sarah Properties.

MEDIATION

[5] The Tribunal canvassed the parties as to whether they have engaged in discussions to resolve any of the issues in the appeal, and whether they are interested in mediation. Counsel indicated that they are encouraged by the ongoing dialogue among their experts and that they would like those discussions to continue. They further conveyed that there are other factors that may make any mediation at this time premature. The Tribunal reminded the parties that Tribunal-assisted mediation is available, and that should they reach a point where mediation will be of assistance, they may request a mediation assessment through the assigned Case Coordinator.

HEARING, PROCEDURAL ORDER, AND ISSUES LIST

[6] Ms. Keating, after offering a brief site description and history of the Proposal, requested that the Tribunal schedule a five-day hearing not earlier than October of

2021, preceded by a second CMC in approximately six months' time. Ms. Keating explained that in discussions with the Town's counsel, Andrew Biggart, he had expressed concerns that due to ongoing reviews by the Town's upper tier, the County of Dufferin (the "County") the Town is not in a position to provide sufficient details and an accurate Issues List. In addressing those concerns, Ms. Keating believed that her request to have a second CMC in six months' time and a hearing no earlier than October 2021, would provide the Town sufficient time and ability to have the information they require and in fairness, not subject the Applicant to the undue prejudice of a hearing date delayed into 2022.

[7] Mr. Biggart concurred that a second CMC is required, and the six-month time frame is sufficient, in his opinion. However, he did not believe that a hearing date should be set at this time, and respectfully disagreed with Ms. Keating that the October 2021 date would ensure the Town have the information necessary and be prepared for a hearing.

[8] Mr. Biggart elaborated on the Town's concerns. He explained that the County is undergoing a Municipal Comprehensive Review (the "MCR"). This review addresses employment land conversions, retention and Provincially mandated employment land job targets. Without the MCR concluding and without recommendations by the County to the Town, Mr. Biggart opined that the Town's position and the Proposal's regard to consistency and conformity to the necessary planning instruments cannot be adequately determined.

[9] Ms. Keating argued that, regard for the MCR process, is provided for by the length of time she has proposed before the second CMC be scheduled and also -the length of time proposed to debate the merits of the proposal at a hearing, if still required. Furthermore, she spoke to the lands already being designated Employment Areas as per the Town's current Schedule A of the OP. She also stated that the County had obtained notice of this CMC, and Ms. Keating submitted that if the County had concerns with the appeals or foresaw any negative consequences of the MCR on these

lands, it had the ability to express them in writing or have them heard at this CMC, which was not done.

[10] Mr. Biggart however, disagreed and read from a memo provided to the County of Dufferin, by the conducting consultants of the MCR and spoke of their recommendations to the Town and the County. The memo indicates:

The MCR process will result in the designation of Employment Lands within the County Official Plan. The policies related to Employment Land conversions will also be reviewed and updated for conformity with the Growth Plan.

Since we are not in a position to understand how much land is needed in the County to accommodate employment uses, it is recommended that the County not approve any official plan amendment applications for Employment Land conversions while the MCR is underway. Landowners should therefore be encouraged to wait for the completion of the MCR before submitting such applications and local municipal councils should be discouraged from adopting such amendments, or accepting applications, prior to the completion of the County MCR.

[11] Mr. Biggart submitted that without this information and without sufficient guidance and recommendations by the County, the Town cannot adequately determine whether the Proposal lands will be impacted or not. Thus, the Town cannot provide the Tribunal with its issues and/or estimate the length of hearing, nor is it in a position to discuss whether settlement or mediation are options at this time.

[12] Mr. Biggart provided the Tribunal with a copy of the Memo he had referenced. The Tribunal marked it as Exhibit 2.

[13] The Tribunal asked counsel if an anticipated conclusion to the MCR had been provided. Mr. Biggart responded that it is the expectation of the Town that the MCR will be concluded by mid-2021, with the recommendations by the County to the Town to be provided at that time. He submitted that subsequent to that, the Town would have the ability to provide the Appellant and the Tribunal with the Issues List by the anticipated July 2021 second CMC, that had been proposed at this CMC's onset. Mr. Biggart further suggested that this would allow the Town the opportunity to narrow and

potentially eliminate issues and possibly mediate or settle depending on the information provided to the Town.

[14] The Tribunal having canvassed Appellant counsel and Town counsel, sought comments from Mr. Ferri. He shared the views of Ms. Keating and was prepared to work on behalf of his clients towards a July 2021 second CMC, and hearing date post October 2021.

[15] Based on the detailed discussion during the CMC regarding the issues, the Tribunal's review of the Memo provided as Exhibit 2, the emergence of the MCR and its relevance on these proceedings, the Tribunal determined that it would be reasonable to schedule the hearing for nine days, no earlier than December of 2021.

[16] The Tribunal, having heard and considered the significance of the MCR on this hearing, determined that the scheduled hearing length and date provided the parties ample time to obtain necessary recommendations and input by the County. Furthermore, the Tribunal made clear to the parties the number of days scheduled for the hearing provided the ability to debate the merits of appeals at greater depth if information obtained by the County required more fulsome analysis, and conversely the ability to reduce days to the hearing if the parties agreed that was possible and warranted. The Tribunal also agreed that a second CMC is required.

[17] The Tribunal directed the parties to provide a joint Procedural Order to the Tribunal within 30 days of this first CMC, however provided the parties the ability to revise the PO prior to the second CMC.

ORDER

[18] The Tribunal orders that the hearing is scheduled to commence at **10 a.m. on Monday, December 6, 2021 for nine days with the Tribunal not sitting on Thursday, December 9, 2021.**

[19] Parties are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/444743573>

Access code: 444 743 573

[20] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](#) or a web application is available:

<https://app.gotomeeting.com/home.html>.

[21] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: (Toll Free): [1 888 299 1889](tel:18882991889) or [+1 \(647\) 497-9373](tel:+16474979373). The access code is **444 743 573**.

[22] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[23] The parties shall provide at least 10 days' notice to the Tribunal prior to the hearing date in the event fewer hearing dates are agreed upon by the parties or if settlement has been entered into by the parties.

[24] The Tribunal further orders that a second CMC is scheduled to commence at **10 a.m. on Tuesday, August 3, 2021**.

<https://global.gotomeeting.com/join/849632069>

Access code: 849 632 069

[25] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: (Toll Free): [1 888 299 1889](tel:18882991889) or [+1 \(647\) 497-9373](tel:+16474979373). The access code is **849 632 069**.

[26] The parties shall provide, on or before **Friday, March 5, 2021**, a joint draft Procedural Order to the assigned Case Coordinator, which shall include:

- a. the draft Procedural Order and Issues List to be approved by the Tribunal, highlighting any items that will require the Tribunal's assistance to finalize; and
- b. the ability for the parties to make amendments to the Procedural Order, pending the conclusion of the MCR by the County of Dufferin and to be reviewed at the second CMC.

[27] No further notice of the hearing or CMC is required.

"M. Russo"

M. RUSSO
MEMBER

"D. Chipman"

D. CHIPMAN
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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