

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 29, 2021

CASE NO(S): PL200556

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1186675 Ontario Ltd.
Appellant: Daniel Aquino
Appellant: Bushland Heights Limited
Appellant: Jessica Ferri; and others
Subject: Township of King (Our King) Official Plan, 2019
Municipality: Township of King
OLT Case No.: PL200556
OLT File No.: PL200556
OLT Case Name: Aquino v. King (Township)

Heard: October 26, 2021 by Video Hearing

APPEARANCES:

Parties

Counsel

Stateview Homes
(High Crown Estates) Inc.
(the "Appellant")

Natalie Ast

Township of King
(the "Township")

Laura Dean

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. RUSSO ON OCTOBER 26,
2021 AND ORDER OF THE TRIBUNAL**

Introduction and Background

[1] This matter before the Ontario Land Tribunal (the “Tribunal”) is one of a number of appeals under the *Planning Act* (the “Act”), s. 17(36), arising from a decision by the Regional Municipality of York’s approval of a new Township Official Plan (the “Our King OP”).

[2] Counsel for other parties, with appeals against the approval of Our King OP, also attended this settlement hearing, as watching briefs, in case of any conflict with the proposed settlement and their client’s ongoing appeals.

[3] The Appellant owns the lands municipally known as 13151, 13165, 13175, 13193 and 13211 Keele Street, in the Village of King City, in the Township (the “Lands”).

[4] In 2018, the Appellant submitted Official Plan Amendment (“OPA”), Zoning By-law Amendment (“ZBLA”), Plan of Subdivision and Plan of Condominium Applications (the “Applications”) to permit the development of the Lands for 56 freehold residential townhome units with access from private, common element streets. In 2020, a related Site Plan Development Application for the Lands was also submitted.

[5] The Applications on the Lands were appealed on a Site-Specific basis to the Tribunal in 2019 (the “2019 Appeals”). The Appellant’s appeals were filed for the Township’s failure to make a decision on the OPA, ZBLA and Plan of Subdivision, within the statutory timelines and pursuant to s. 22(7), s. 34(11) and s. 51(34) respectively of the Act.

[6] The OPA sought by the Appellant was on a Site-Specific basis, to the former Township OP, with Applications predating the current Our King OP, that since has been adopted.

[7] Both Parties continued to work through issues in anticipation of the Hearing of the Merits, and on that premise, the Appellant submitted a revised proposal to the Township in April, 2021 (the “Revised Proposal”). Township Council considered the Revised Proposal and determined it could support it and a settlement in principle at the Tribunal hearing is: “subject to the satisfaction of any outstanding technical matters and the preparation and approval of satisfactory instruments”.

[8] On June 16 and 17, 2021, the Tribunal held a Settlement Hearing with respect to the 2019 Appeals, based on the Revised Proposal. The Revised Proposal reduced the number of proposed residential units to 48. It also proposed townhouse-built form with specificity to townhouse block configuration and adherence to Township Design policies. The Revised Proposal further included a signalized intersection on Keele Street, for access to the development that would be in alignment with the existing intersection with Norman Drive and Keele Street, located opposite (west) of the Lands.

[9] The Tribunal approved and allowed the 2019 Appeal of the Appellant’s OPA, in part and modified the King City Community Plan. The Tribunal also approved but withheld its Order with respect to the ZBLA subject to conditions. The Tribunal also approved the draft Plan of Subdivision and the draft plan conditions and further, gave the authority to the Township to clear the conditions of draft approval, as they were satisfied.

THE CASE MANAGEMENT CONFERENCE

[10] The matter currently before the Tribunal under s. 17(36) of the Act, has had two Case Management Conferences (“CMC”) dealing with multiple appellants to the Township adopted Our King OP.

[11] At the second CMC, the Appellant as well as the Township advised the Tribunal that with the 2019 Appeals of the Appellant having been settled, the two Parties were now also in agreement to settling this matter appealed pursuant to s. 17(36) of the Act.

[12] A one-day Settlement Hearing between the Appellant and the Township was subsequently agreed to and scheduled by the Tribunal, with no objections provided from any remaining Parties.

Expert Witness

[13] The Tribunal affirmed Aloma Dreher. Having been provided her Acknowledgement of Expert's Duty form and having heard her credentials with no objection, the Tribunal qualified Ms. Dreher to provide expert opinion evidence in the field of land use planning.

[14] Ms. Dreher provided a brief history of the Applications and advised the Tribunal that she has been involved with the Applications as planner with the Township over the past year or two and was personally assigned to the Applications since the Revised Proposal and current Our King OP Appeal were initiated at the onset of 2021.

[15] In advance of this Settlement Hearing, the Parties provided the Tribunal an Affidavit titled "Affidavit of Aloma Dreher", which was accepted and marked as Exhibit 1 at the proceedings.

The Hearing

[16] Laura Dean, Counsel for the Township, provided her opening submission, which included a brief overview of the 2019 Appeals recently approved by the Tribunal and the current Settlement, before the Tribunal between the Appellant and Township.

[17] Ms. Dean's submissions highlighted that the Parties with the Settlement, before the Tribunal, are seeking this Approval in order to modify the now in force Our King OP, and bring the Revised Proposal into conformity with Township's current OP.

Applicable Legislation and Policies

[18] Land use planning in Ontario is a policy-led system implemented in hierarchical fashion. This system is deliberately crafted to recognize that there cannot be a one-size fits all approach to implementing policy framework, given the diversity of Ontario's local communities. As such, the broader Provincial policies and objectives are to be implemented by each municipality through their OP, Zoning By-laws, issue-specific guidelines, etc.

[19] Although the Parties have settled their issues, the Tribunal must still determine the proposal meets provincial interests and municipal policy framework. In adjudicating the appeal, the Tribunal must have regard to matters of provincial interest enumerated in s. 2 of the Act. The Tribunal must be satisfied that the proposal is consistent with the Provincial Policy Statement, 2020 (the "PPS"), pursuant to s. 3(5) of the Act. Further, the Tribunal must also find that the proposal conforms with policies of the provincial plan, A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (the "Growth Plan"). Lastly, the Tribunal must be satisfied with the proposal's conformity with both the Township and Regional OP, and that it represents good land use planning in the public interest.

Expert Witness Evidence

[20] The Appellant's Appeal was one of twelve appeals that was initiated with the adoption of the now in force Our King OP.

[21] For this Settlement, the Township and the Appellant are now proposing modifications to the Our King OP for the Lands on a site-specific basis. Ms. Dreher opined the purpose of the modifications is to address the Appellant's Our King OP Appeal and to ensure conformity between the Appellant's recently obtained OPA that was approved by the Tribunal (PL190494).

[22] Ms. Dreher opined that a core issue lies in that the "Established Neighbourhood" land use designation of the Our King OP, and in which the Proposal falls within, that does not allow for the density of development that the Appellant has been approved to construct.

[23] The Appellant's appeal states that:

the "Established Neighbourhood" designation is inappropriate for the Lands and that this designation would limit development on the Lands to the existing single-family dwellings, replacement buildings and one detached dwelling unit per lot of record which is inconsistent with the development potential for the Lands which was recognized in the earlier drafts of the Our King OP and recommended by Township Staff for approval.

[24] Further, as indicated in Ms. Dreher's Affidavit, the Appellants are requesting the Lands be re-designated to the "Mixed Use" designation in accordance with previous drafts of the Our King OP, which would permit the development proposed by the Applications without the need for site-specific amendments to the Our King OP and indicates that the "Mixed Use" designation would permit moderate intensification, which would be in greater conformity with Regional and Provincial policies for intensification along arterial roads. The Appellants have also appealed the Natural Heritage policies of the Our King OP, on the basis that they are not consistent with site-specific investigations and reports that were made during the consideration of the Applications for the proposed development on the Lands.

[25] The Parties have proposed to modify s. 5.17 – Village Site-Specific Policy Areas, to add a new site-specific policy section after s. 5.17.7 to recognize the June, 2021 Tribunal decision (PL190494) approving the OPA which formed part of the Revised Proposal.

[26] Modifications are also proposed to Schedule D1 of the Our King OP to add and delineate the Village Site-Specific Policy Area (V-SSPA-8), to change the land use designation from “Medium Density Residential – Policy s.7.10.XX in Schedule 1 within Attachment 1 to the Tribunal’s Decision (PL190494) to “Mixed Use (V-SSPA-8)” and to further amend the land use designation that is designated “Environmental Protection Area” on Schedule 1 within Attachment 1 of the Tribunal’s Decision (PL190494) to “Village Natural Heritage System (V-SSPA-8).

Expert Witness Conclusion

[27] It was the expert opinion of Ms. Dreher that the modifications identified and provided to the Tribunal in draft form, implement and conform to the Tribunal’s Decision (PL190494) approving the Appellant’s site specific OPA.

[28] In the opinion of Ms. Dreher, the proposed modifications:

- i. Have regard to s. 2 of the Act
- ii. Conform to the Growth Plan and relevant Provincial Plans
- iii. Are consistent with the PPS
- iv. Conform to the Region’s OP
- v. Conform to the Township’s, Our King OP and relevant policies and goals
- vi. Constitutes good planning, and is in the public interest

[29] Ms. Dreher concluded with her recommendation that the Tribunal approve the modifications to the Our King OP as set out in Attachment 1 provided.

Decision

[30] The Tribunal, having reviewed all evidence provided in Exhibit 1, The Affidavit of Aloma Dreher, and having heard the testimony and opinions of Ms. Dreher, accepts the uncontroverted expert land use planning evidence provided by the witness. The Tribunal finds that the proposed planning instruments, to permit the development, have appropriate regard for the matters of Provincial Interest and s. 2 of the Act. The Tribunal also finds the modifications are consistent with the PPS, conform to the GP, conform to both the Township and Regional OP, and represents good land use planning, in the public interest.

ORDER

[31] **THE TRIBUNAL ORDERS THAT** the Appeal by Stateview Homes (High Crown Estate) Inc. be allowed in part and that in accordance with the provisions of s. 17(50) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, s. 5.17 and Schedule D1 of the Township of King Official Plan, as adopted by the Township of King on September 23, 2019 as modified by the Township of King Council on August 10, 2020 and as further modified and approved by the Regional Municipality of York on October 8, 2020, shall be modified as set out in Attachment 1 hereto and as modified, approved in respect of the lands municipally known as 13151, 13165, 13175, 13193 and 13211 Keele Street, in the Village of King City, in the Township of King.

[32] **AND THE TRIBUNAL ORDERS** that the Appeal by Stateview Homes (High Crown Estate) Inc., in all other respects, is otherwise dismissed.

"M. Russo"

M. RUSSO
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

Proposed Modifications to Section 5.17 – Village Site-Specific Policy Areas and Schedule D1- Village of King City Land Use Designations Township of King, Our King Official Plan, 2019

Note: **Bold** text denotes added text and/ or format change

Section 5.17 Village Site-Specific Policy Area

Section 5.17 is amended by adding a new Site-Specific Policy Area Section after Section 5.17.7 to recognize a recent OLT decision as follows:

“5.17.8 Village Site Specific Policy Area 8 (V-SSPA-8)

Within the lands identifies as Village Site Specific Policy Area 8 (V-SSPA-8) on Schedule D1 and describes as Part of Lot 55 and Lot 56, Registered Plan 85, Lots 1 and 2, Registered Plan 360 and Part of Lot 7, Concession 3, Township of King, it is the policy of Council:

- 1. That the land use designation policies of Sections 5.8 and 5.15 and all other policies of this plan apply, except as set out in this Site-Specific Policy Area.**
- 2. That notwithstanding the provisions of Sections 5.8.1, 5.8.2, and 5.8.3 of this Plan, the subject lands shall be developed in accordance with the following:**
 - a. That the maximum density shall be 40 units per net residential hectare and shall not exceed a total of 48 units;**
 - b. That the permitted uses shall be limited to:**
 - i. townhouse dwelling units, with freehold or condominium tenure, accessed through a private road.**
 - ii. home occupations subject to the regulations of the Zoning By-law;**
 - c. That the maximum building height shall be three (3) storeys above the finished grade;**
 - d. That the maximum number units within an individual block of townhouse dwelling units shall be six (6);**
 - e. All development shall conform with the applicable policies of this Plan, including the Village Design Policies of Section 5.3.**
- 3. That within specific areas identified in Schedule 2 within Attachment 1 to the Decision of OLT Case No. PL190494 only, the size and extent of the minimum vegetation protection zones shall be identified through a Functional Servicing Study and/or an Environmental Impact Study (EIS). The EIS will include a natural heritage evaluation and/or hydrological evaluation, as required. These studies shall demonstrate that: (1) all feasible options have been considered to avoid reductions in the minimum vegetation protection zones; (2) provide justification for the reductions; (3) outline measures to minimize the impacts; and (4) outline compensation measures including robust restoration plantings and/or increased minimum vegetation protection zones in other areas. The extent of the minimum vegetation protection zones recommended in the natural heritage evaluation and/or hydrological evaluation will be to the satisfaction of York Region, the Toronto and Region Conservation Authority and the Township**

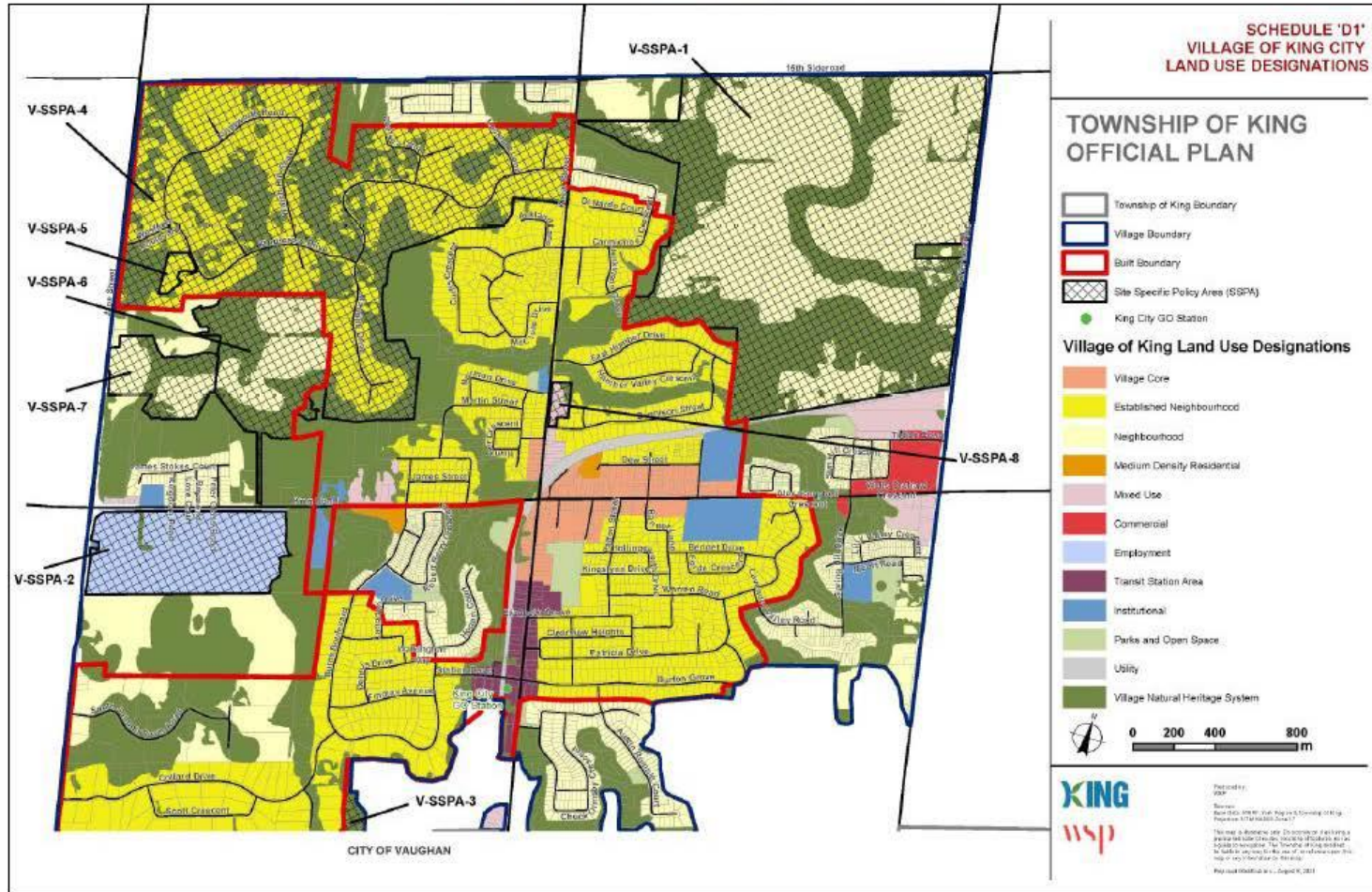
of King. Further, where any reduction of the minimum vegetation protection zone is permitted, appropriate compensation, restoration and/or rehabilitation of equivalent or greater lands elsewhere shall be required to be provided to the satisfaction of York Region, the Toronto and Region Conservation Authority and the Township of King.

4. That the lands subject to V-SSPA-8 shown as "Medium Density Residential – Policy 7.10.XX" on Schedule 1 within Attachment 1 to the Decision of OLT Case No. PL190494 shall be designated "Mixed Use (V-SSPA-8)" on Schedule D1 to this Plan.
5. That the lands subject to V-SSPA-8 shown as "Environmental Protection Area" on Schedule 1 within Attachment 1 to the Decision of OLT Case No. PL190494 shall be designated "Village Natural Heritage System (V-SSPA-8)" on Schedule D1 to this Plan.
6. That in accordance with Section 9 of this Plan, the policies of this Plan shall be implemented by way of an amendment to the Zoning By-law, and through Draft Plan of Subdivision, Draft Plan of Condominium, and Site Plan approvals, pursuant to the Planning Act, R.S.O. 1990, c. P.13, as amended.
7. That the boundaries of VSSPA-8 and the land use designations are approximate. Minor adjustments shall be permitted by the Township of King and shall not require a further amendment to this Plan as long as the intent of its policies is maintained."

Schedule D1 – Village of King City Land Use Designations

1. Schedule D1 – Village of King City Land Use Designations is amended to add and delineate V-SSPA-8.
2. Schedule D1 – Village of King City Land Use Designations is further amended to change the land use designation of the lands designated "Medium Density Residential – Policy 7.10.XX" on Schedule 1 within Attachment 1 to the Decision of OLT Case No. PL190494 to "Mixed Use (V-SSPA-8)".
3. Schedule D1 – Village of King City Land Use Designations is further amended to change the land use designation of the lands designated "Environmental Protection Area" on Schedule 1 within Attachment 1 to the Decision of OLT Case No. PL190494 to "Village Natural Heritage System (V-SSPA-8)".

SCHEDULE D1 – VILLAGE OF KING CITY LAND USE DESIGNATIONS



CITY OF VAUGHAN