

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** July 16, 2021

**CASE NO(S):** PL210077

The Ontario Municipal Board (the “OMB”) and the Local Planning Appeal Tribunal (the “LPAT”) is continued under the name Ontario Land Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Local Planning Appeal Tribunal 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: 1975919 Ontario Inc.  
Subject: Proposed Official Plan Amendment No. 2021-01 (OPA 71)  
Municipality: City of Kingston  
LPAT Case No.: PL210077  
LPAT File No.: PL210077  
LPAT Case Name: 1975919 Ontario Inc. v. Kingston (City)

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

Appellant: 1975919 Ontario Inc.  
Subject: By-law No. 2021-02  
Municipality: City of Kingston  
LPAT Case No.: PL210077  
LPAT File No.: PL210078

**Heard:** June 23, 2021 by video hearing

**APPEARANCES:**

**Parties**

1975919 Ontario Inc.

**Counsel**

Wayne Fairbrother

City of Kingston

Tony Fleming

**MEMORANDUM OF ORAL DECISION DELIVERED N.P. ROBINSON ON JUNE 23, 2021 AND ORDER OF THE TRIBUNAL**

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[1] The Appellant, 1975919 Ontario Inc. (“Appellant”), appeals the decisions of the council of the City of Kingston (“City”) with respect to By-law No. 2021-01 (Official Plan Amendment 71) and By-law No. 2021-02. The thrust of the amendments proposed would change rules concerning density and requiring a single large shop on the ground floor at 429 And 445 Princess Street in an area known as Williamsville Main Street in Kingston, Ontario (“Subject Lands”).

[2] The statutory parties to this matter reached a settlement on the eve of the hearing. There were no party or participant requests before the Tribunal and the parties offered a joint submission with respect to resolution.

[3] This area was subject to a comprehensive planning study completed in 2012. The outcome of the study process was an amendment to the City’s Official Plan and Zoning By-law to implement the objectives and vision for Williamsville Main Street.

[4] Over the course of seven years, the Williamsville Main Street area experienced tremendous growth, effectively seeing the equivalent of 15 years of anticipated growth within that time period. As a result of development pressures and unanticipated applications for greater heights and density than contemplated in the initial study, the City passed an Interim Control By-law on May 21, 2019 for the Williamsville Main Street.

[5] The resulting land use planning study included a detailed transportation model and analysis, a review of servicing capacity, extensive public consultation, three-dimensional visual modelling of the corridor and was informed by a parallel study, “Density by Design” which considers built form of greater heights and densities in various areas of the City.

[6] The City prepared a Comprehensive Report that identified four “definitions of success” that were utilized within the study process. The definition that is most relevant to the within matter states that “an approach that allows many/most individual projects to be viable under reasonable assumptions, with enough projects “green-lit” in the short to medium term to address strategic smart growth goals in this key urban corridor.”

[7] The proposed settlement includes further amendments to the Official Plan and Zoning By-law to ensure that the properties at 429 and 445 Princess Street can be developed within the maximum height permitted without limitations on density (measured in units per net hectare) that might otherwise restrict the ability of the property to be developed at its highest potential as approved in Official Plan Amendment 71 and By-law No. 2021-02, the Zoning By-law Amendment.

[8] By-law 2021-01 (Official Plan Amendment 71) was approved by the City on December 1, 2020, replacing entirely the previous policies for the Williamsville Main Street, known as Policy 10E.1.

[9] By-law No. 2021-02 was approved by the City on December 1, 2020 to implement the new Williamsville Main Street Official Plan policies in the Zoning By-law.

[10] The Appellant owns properties at 429 and 445 Princess Street. The Appellant appealed By-law No. 2021-01 and By-law No. 2021-02 to ensure that density restrictions contained in both instruments did not impair its ability to develop its properties within the approved height limit of 20 storeys. Additionally, the Appellant requested that the last sentence of Official Plan Policy 10E.1.25, which requires a single use retailer to include other smaller shops or offices along the ground floor frontage of a building, be repealed or amended.

[11] On June 23, 2021, the parties presented a joint submission to the Tribunal requesting that the Tribunal further amend By-laws Nos. 2021-01 and 2021-02 as follows:

A. That Schedule “H” of By-law 2021-01 be amended by Order of the Tribunal as follows:

1. The last sentence of Policy 10E.1.25, beginning with the words “Where a single use retailer...”, shall be deleted in its entirety.  
*And*

B. That Schedule “K” of By-law 2021-02 be amended by Order of the Tribunal as follows:

1. Section 23.C.4(k) shall be amended by adding the following paragraph immediately after sub-paragraph (i):

“(ii) The maximum residential density provisions in subsection (i) do not apply to those properties identified as 429 and 445 Princess Street, which shall be subject to a “-H” Holding Symbol in accordance with Section 23.C.5.”

[12] The Appellant and City propose that By-laws Nos. 2021-01 and 2021-02 remain in full force and effect in all other respects.

## **ANALYSIS & FINDINGS**

[13] The City filed an Affidavit (“Affidavit”), sworn by a Land Use Planner, Sukriti Agarwal, stating that the proposed settlement is consistent with the Provincial Policy Statement 2020, conforms with the applicable policies of the Official Plan and is good land use planning.

[14] The Affidavit indicates that the amendments proposed in the settlement conform with the general purpose and intent of the Official Plan to manage growth as follows:

- Williamsville Main Street is designated Main Street Commercial in the Official

Plan (Schedule 3-A) and is part of the Princess Street Corridor Specific Policy Area, where the City plans for increased heights and densities and mixed-use developments in a pedestrian-friendly streetscape;

- Concentrating density within Williamsville Main Street supports existing transit and active transportation infrastructure – confirmed in the supporting traffic analysis; and
- Increased density also makes the most efficient use of existing servicing as confirmed by the supporting servicing study.

[15] All of these goals are achieved with the further amendment proposed in the settlement.

[16] The Official Plan Amendment adopted by the City includes a sentence to require small inset stores within the frontage of the single use retailer to contribute to this active streetscape.

[17] Section 10.E.1.25 of the Official Plan – as amended by By-law No. 2021-01 – speaks to the intent of the Williamsville Main Street policies to encourage a vibrant and pedestrian friendly streetscape. The policy establishes glazing requirements for the ground floor with direction to ensure the treatment is highly transparent to create a visual connection to the street. Sections 10E.1.19-24 establish additional policies to create an active and pedestrian-friendly streetscape – none of which are affected by the within settlement. The proposed removal of the final sentence of policy 10.E.1.25 does not detract from the balance of the policy and will not prevent the City from achieving its goal to have an animated and active streetscape.

[18] The Affidavit notes that the requirement retail frontages requirement is very difficult to implement. The Affidavit of Ms. Agarwal indicates that removing this requirement is reasonable and represents good planning.

[19] The Tribunal will impose the use of a holding symbol to ensure servicing constraints are not exacerbated by new development. The imposition of a holding symbol on 429 and 445 Princess Street ensures that the Subject Lands will not be developed unless servicing capacity for the site and the area exists.

[20] The proposed amendment to By-law No. 2021-02 contained in the Minutes of Settlement meets the intent of the Official Plan to:

- Provide a sustainable framework for future development, including phasing in of development so that it does not compromise the long-term servicing strategy for Williamsville Main Street;
- ensure that development does not compromise the servicing capacity of the area and/or hinder the development of other properties by limiting their access to servicing capacity;
- use a holding symbol to ensure the availability of servicing; and
- ensure that density limits support the appropriate buildout of the corridor without an undue focus on the specific density number.

[21] The Tribunal finds that the development represents a reasonable intensification and a good use of existing infrastructure under the Provincial Policy Statement 2020.

[22] The Tribunal is satisfied that, on the basis of the evidence set forth in the Affidavit, that the settlement represents good planning, conforms with the Official Plan and is consistent with the Provincial Policy Statement 2020.

## **ORDER**

[23] The Tribunal Orders that the Official Plan Amendment appeal is allowed in part. Schedule "H" of By-law No. 2021-01 shall be amended as follows:

- a. The last sentence of Policy 10E.1.25 beginning with the words “Where a single use retailer...”, shall be deleted in its entirety.
- b. In all other respects By-law 2021-01 shall be in full force and effect.

[24] The Tribunal Orders that the Zoning By-law Amendment appeal is allowed in part. Schedule “K” of By-law No. 2021-02 is amended as follows:

- a. Section 23.C.4(k) shall be amended by adding the following paragraph immediately after sub-paragraph (i):  
  
“(ii) The maximum residential density provisions in subsection (i) do not apply to those properties identified as 429 and 445 Princess Street, which shall be subject to a “-H” Holding Symbol in accordance with Section 23.C.5”.
- b. In all other respect By-law No. 2021-02 shall be in full force and effect.

*“N.P. Robinson”*

N.P. ROBINSON  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://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.