

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



**ISSUE DATE:** November 15, 2021

**CASE NO(S):** PL210286  
CRB2112  
CRB2113

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

Applicant and Appellant: Losani Homes (1998) Ltd.  
Subject: Request to amend the Official Plan – Failure of the Town of Grimsby to adopt the requested amendment  
Existing Designation: Neighbourhood Commercial Area  
Proposed Designated: Neighbourhood Commercial Area, site specific  
Purpose: To permit a seven storey mixed-use building  
Property Address/Description: 141-149 Main St. E.  
Municipality: Town of Grimsby  
Approval Authority File No.: OPA-26OP-16-2002  
OLT Case No.: PL210286  
OLT File No.: PL210286  
OLT Case Name: Losani Homes (1998) Ltd. 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: Losani Homes (1998) Ltd.  
Subject: Application to amend Zoning By-law No. 14-45 – Refusal or neglect of the Town of Grimsby to make a decision  
Existing Zoning: Neighbourhood Commercial (NC), site specific exceptions 19 and 126  
Proposed Zoning: Neighbourhood Commercial (NC), site specific exceptions (to be determined)  
Purpose: To permit a seven storey mixed-use building  
Property Address/Description: 141-149 Main St. E.  
Municipality: Town of Grimsby  
Municipality File No.: 26Z-16-2004  
OLT Case No.: PL210286  
OLT File No.: PL210287

**PROCEEDING COMMENCED UNDER** subsection 34.1(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Appellant: Losani Homes (1998) Ltd.  
Subject: Appeal of the Decision of Council on an application to demolish or remove a building or structure  
Property Address/Description: 141 Main St. E.  
Municipality: Town of Grimsby  
OLT Case No.: PL210286  
OLT File No.: PL210247

**PROCEEDING COMMENCED UNDER** subsection 34.1(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Appellant: Losani Homes (1998) Ltd.  
Subject: Appeal of the Decision of Council on an application to demolish or remove a building or structure  
Property Address/Description: 147 Main St. E.  
Municipality: Town of Grimsby  
OLT Case No.: PL210286  
OLT File No.: PL210248

**PROCEEDING COMMENCED UNDER** subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Owner/Objector: Losani Homes (1998) Ltd.  
Subject: Objection to the Notice of Intention to Designate  
Property Address: 141 Main Street East  
Legal Description: CON 1 PT LT 6, North Grimsby; PTS 30 & 31 & SUBJECT TO AN EASEMENT OVER PTS 24 to 29, 30R-10405; GRIMSBY  
Municipality: Town of Grimsby  
OLT Case No.: CRB2112  
OLT Case Name: Losani Homes (1998) Ltd. v. Grimsby (Town)

**PROCEEDING COMMENCED UNDER** subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Owner/Objector: Losani Homes (1998) Ltd.  
Subject: Objection to the Notice of Intention to Designate  
Property Address: 147 Main Street East

Legal Description: PT LT 6 CON 1, North Grimsby (FMLY PCLS 18 & 19, PT PCL 17), as in RO635982 & RO693171; PT 30R-8135; GRIMSBY  
 Municipality: Town of Grimsby  
 OLT Case No.: CRB2113  
 OLT Case Name: Losani Homes (1998) Ltd. v. Grimsby (Town)

**Heard:** September 3, 2021 by Video Hearing (“VH”)

### **APPEARANCES:**

#### **Parties**

#### **Counsel**

Town of Grimsby	Tom Halinski
Losani Homes (1998) Ltd.	Denise Baker
Burgess Heritage Group Inc.	Joanna Shapira

### **MEMORANDUM OF ORAL DECISION DELIVERED BY G.C.P. BISHOP ON SEPTEMBER 3, 2021 AND ORDER OF THE TRIBUNAL**

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#### **INTRODUCTION**

[1] This is the first Case Management Conference (“CMC”) involving a number of appeals on properties owned by Losani Homes (1998) Ltd. (“Losani”), on lands municipally known as 141-149 Main Street East (“subject lands”), in the Town of Grimsby (“Town”). Although the discussions of the various appeals were held concurrently, decisions dealing with any potential consolidation of these appeals are pending.

[2] Notices were given on two different appeal streams. The first notice involves two appeals under the *Planning Act* based on the neglect of the Town, within the prescribed time, to deal with an application for Official Plan Amendment (“OPA”) under s. 22(7) and a Zoning By-law Amendment (“ZBA”) under s. 34(11) of the *Planning Act*. These appeals affect all of the subject lands. As part of these appeals, there are also two appeals under s.

34.1 of the *Ontario Heritage Act*, where the Town has refused demolition applications on two of the properties located at 141 and 147 Main Street East.

[3] The second notice involves two appeals under s. 29(5) of the *Ontario Heritage Act* against the Town's notice of intent to designate two of the properties located at 141 and 147 Main Street East.

[4] These appeals have unique circumstances in the way they are handled, based on the timing around the proclamation of Bill 108. The appeals under s. 22(7) and 34(11) of the *Planning Act*, along with the appeals under s. 34.1 of the *Ontario Heritage Act* ("OHA") remain relatively unchanged with the enactment of Bill 108 and the Ontario Land Tribunal has jurisdiction to render decisions in these matters. The appeals under s. 29(5) of the *Ontario Heritage Act* were filed prior to the enactment of Bill 108 and therefore the rules prior to Bill 108 govern. In these cases, the decision is not binding and is only a recommendation to public authority.

[5] The proposed development of the subject lands contemplates the removal of the two buildings that the Town wishes to designate under the OHA and replace them with a seven-storey mixed use building, comprising of flexible commercial space on the ground floor and 215 residential units.

## **STATUS REQUESTS**

[6] On consent of the parties, the Tribunal granted Party Status to Burgess Heritage Group Inc. ("Burgess"). Burgess owns lands, directly to the west of the subject lands and under Case No. PL200201, which has an appeal in front of the Tribunal for the construction of a five-storey mixed use building at 133 and 137 Main Street East. Burgess and Losani have a common interest in each other's proposed development to the extent that storm servicing (sewer and dry pond) are appropriately coordinated.

[7] Ruxandra Bucataru attended the proceeding, which she stated she is the representative for more than 300 Grimsby residents, seeking Participant Status. The Tribunal explained the difference between incorporated and unincorporated groups, and consented to granting her participant status as an individual. She did indicate that the group was contemplating the incorporation process and the Tribunal will grant participant status to the incorporated entity if this takes place prior to the submission of the witness statement.

[8] Margot Smeenck was also in attendance and was granted Participant Status. There were other requests for Participant Status but they did not make themselves known at this CMC.

[9] In all cases, the Party and Participants are granted status to the OPA and ZBA matters.

## **UNRESOLVED ISSUES**

[10] Denise Baker requested that all six appeals be consolidated into one hearing event. Ms. Baker expects that 10 days will be required to complete all aspects of the various appeals.

[11] Tom Halinski informed the Tribunal that the Town has not taken a position on these files yet and also does not agree with the consolidation of the files at this point.

[12] There were two participants that requested Participant status in writing but were not at this event. The Tribunal directs Lisa Cestnik and Paul Tomlinson to contact the Parties and the Tribunal by no later than **Friday, December 3, 2021**, if they wish to become participants to the OPA and ZBA files.

[13] The Tribunal directs the parties to discuss the hearing together of the two files, which the Tribunal expects will take place once Mr. Halinski receives direction from the Town. The

Tribunal was presented with a draft Procedural Order (“PO”) and expects the parties to finalize the draft PO.

[14] The parties did agree that a merit hearing, estimated for 10 days in length, could be set now and would cover the amount of time required for a consolidated hearing, if ultimately agreed upon by the parties and acceptable to the Tribunal. The VH, on the merits, will begin on **July 4, 2022, at 10 a.m. for 10 days.**

[15] The Tribunal gave direction to the parties to contact the case coordinator for the scheduling of a second CMC by Telephone Conference Call (“TCC”). This call will deal with the two Participants that did not attend this CMC; the position of the Parties with respect to consolidation, if not agreed upon; any amendments to the PO, as a result of the discussion on consolidation and; the setting of a hearing date on the s. 29(5) appeals, if required.

#### **ADMINISTRATIVE MATTERS**

[16] After the event, the Member did receive the final version of the PO from the parties and is appended to this Decision at Attachment 1. The Tribunal notes that the issues are structured to accommodate a consolidated hearing that is yet to be determined.

[17] The Member also finds it prudent to set the next CMC date for both appeal streams in this Decision to avoid further circulation by the parties.

[18] The next CMC is set to commence on **Tuesday, December 14, at 10 a.m.** by VH. No further notice is required for the two appeal streams and all matters will be discussed concurrently at this scheduled event.

[19] Upon request of the parties, the Tribunal set a 10-day hearing commencing on **Monday, July 4, 2022, at 10 a.m.** by VH. No further notice is required for the hearing.

## THE HEARING DETAILS

[20] The hearings are scheduled to proceed by video as follows:

**Tuesday, December 14, 2021 at 10 a.m. (CMC hearing)**

**GoTo Meeting:** <https://global.gotomeeting.com/join/864031653>

**Access code:** 864-031-653

**Audio-only telephone line:** +1 (647) 497-9373 or (Toll Free) 1 (888) 299-1889

**Audio-only access code:** 864-031-653

**Monday, July 4, 2022 at 10 a.m. (10 day hearing)**

**GoTo Meeting:** <https://global.gotomeeting.com/join/153517965>

**Access code:** 153-517-965

**Audio-only line:** +1 (647) 497-9391 or (Toll Free) 1 (888) 455-1389

**Audio-only access code:** 153-517-965

[21] Parties and participants are asked to log into the VH at least **15 minutes** before the start of the event to test their video and audio connections.

[22] 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](https://global.gotomeeting.com/join/153517965) or a web application is available: <https://app.gotomeeting.com/home.html>

[23] 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.

[24] 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 events may be directed to the Tribunal's Case Coordinator having carriage of this case.

[25] The Member will be available for the noted CMC in paragraph 18, to resolve the various items discussed above, but is not seized of the hearing on the merits.

[26] So Orders the Tribunal.

*"G.C.P. Bishop"*

G.C.P. BISHOP  
VICE CHAIR

**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 ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.



**ATTACHMENT 1****ONTARIO LAND TRIBUNAL**

Tribunal ontarien de l'aménagement du territoire

**CASE NO(S): PL210286****PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990 c. P. 13 as amended

Case Number:	PL210286
File Number:	PL210286
Related File Number(s):	PL210287, PL210247, PL210248
Municipality:	Town of Grimsby
Official Plan Number:	OPA-26OP-16-2002
Property Location:	141-149 Main Street East
Applicant/Appellant(s):	Losani Homes (1998) Ltd.

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

Case Number:	PL210286
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Municipality:	Town of Grimsby
Official Plan Number:	OPA-26OP-16-2002
Property Location:	141-149 Main Street East
Applicant/Appellant(s):	Losani Homes (1998) Ltd.

**PROCEEDING COMMENCED UNDER** subsection 34.1(1) of the Ontario Heritage Act, R.S.O. 1990, c. O.18, as amended

Appellant:	Losani Homes (1998) Ltd.
Subject:	Appeal of the Decision of Council on an application to demolish or remove a building or structure
Property Address/Description:	141 Main St. E.
Municipality:	Town of Grimsby
OLT Case No.:	PL210286
OLT File No.:	PL210247

**PROCEEDING COMMENCED UNDER** subsection 34.1(1) of the Ontario Heritage Act, R.S.O. 1990, c. O.18, as amended

Appellant:	Losani Homes (1998) Ltd.
Subject:	Appeal of the Decision of Council on an application to demolish or remove a building or structure

Property Address/Description: 147 Main St. E.  
Municipality: Town of Grimsby  
OLT Case No.: PL210286  
OLT File No.: PL210248

**PROCEEDING COMMENCED UNDER** subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner/Objector: Losani Homes (1998) Ltd.  
Subject: Objection to the Notice of Intention to Designate  
Property Address: 141 Main Street East  
Legal Description: CON 1 PT LT 6, North Grimsby PTS 30 & 31 &  
SUBJECT TO AN EASEMENT OVER PTS 24 to  
29, 30R-10405; GRIMSBY  
Municipality: Town of Grimsby  
OLT Case No.: CRB2112  
OLT Case Name: Losani Homes (1998) Ltd. v. Grimsby (Town)

**PROCEEDING COMMENCED UNDER** subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner/Objector: Losani Homes (1998) Ltd.  
Subject: Objection to the Notice of Intention to Designate  
Property Address: 147 Main Street East  
Legal Description: PT LT 6 CON 1, North Grimsby (FMLY PCLS 18 &  
19, PT PCL 17), as in RO635982 & RO693171; PT  
1 30R-8135 ; GRIMSBY  
Municipality: Town of Grimsby  
OLT Case No.: CRB2113  
OLT Case Name: Losani Homes (1998) Ltd. v. Grimsby (Town)

### PROCEDURAL ORDER

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

### Organization of the Hearing

2. The video hearing will begin on **July 4, 2022 at 10:00 a.m.**
3. The parties' initial estimate for the length of the hearing is **10 days**. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.

4. The parties and participants identified at the case management conference are set out in **Attachment 1**.
5. The Issues are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in **Attachment 3** to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/>).

### **Requirements Before the Hearing**

9. If the Applicant/Appellant intends to present in its witness statements revisions to the proposal (official plan amendment and/or zoning by-law amendment) from the one filed with the Town, the Applicant/Appellant shall provide copies of the revised proposal, including revised text, plans and drawings, together with copies of any new or updated technical reports it intends to rely on in support of the revised proposal to the other parties on or before **Friday, February 4, 2022**. The applicant acknowledges that any revisions to the proposal after that date without the consent of the parties may be grounds for a request to adjourn the hearing.
10. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **Monday, March 7, 2022**. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
11. Expert witnesses in the same field shall have a meeting on or before **Wednesday, April 20, 2022** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing and provide this list to all of the parties on or before **Friday May 6, 2022**.

12. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in paragraph 14. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
13. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in paragraph 14. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in paragraph 14.
14. On or before **Friday May 6, 2022** the parties shall provide copies of their witness and expert witness statements to the case coordinator and the other parties in accordance with paragraph 24.
15. On or before **Monday, June 6, 2022** the parties shall provide copies of their reply witness and expert witness statements to the case coordinator and the other parties in accordance with paragraph 24.
16. On or before **Friday, May 6, 2022** a participant shall provide copies of their written participant statement to the case coordinator and the other parties in accordance with paragraph 24. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
17. On or before **Friday, June 24, 2022** the parties shall provide copies of their visual evidence to the OLT case coordinator and all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
18. Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before **Monday, June 20, 2022** in accordance with paragraph 24.
19. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case coordinator on or before **Friday, June 24, 2022**.
20. On **Thursday, June 29, 2022** the parties shall provide to all parties and the Tribunal, in password protected format, any documents that will be used by the party in the cross-examination of an opposing party's witness. The password protected documents shall only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing.
21. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. See Rule 10 of the Tribunal's Rules with respect to Motions,

which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.

22. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
23. The parties shall prepare and file a [hearing plan](#) with the Tribunal on or before **Friday, June 24, 2022** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.
24. All filing shall be electronic unless hard copy is directed by the Tribunal to be provided. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the Tribunal's Rule 7.
25. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

**This Member is [not] seized.**

**So orders the Tribunal.**

**Attachment 1: Parties and Participants**

<b>Appellant/Party</b>	<b>Counsel</b>	<b>Contact</b>
Losani Homes (1998) Ltd.	Denise Baker	<b>WeirFoulds LLP</b> Suite 10, 1525 Cornwall Road Oakville, ON L6J 0B2 Phone: 416-947-5090 <a href="mailto:dbaker@weirfoulds.com">dbaker@weirfoulds.com</a>
Town of Grimsby	Tom Halinski	<b>Aird &amp; Berlis LLP</b> Brookfield Place, 181 Bay Street, Suite 1800 Toronto, Canada M5J 2T9 Phone: 416-865-7767 <a href="mailto:thalinski@airdberlis.com">thalinski@airdberlis.com</a>
Burgess Heritage Group Inc.	Johanna Shapira	<b>Wood Bull LLP</b> 65 Queen Street West, Suite 1400 Toronto, ON M5H 2M5 Phone: 416-203-5631 <a href="mailto:jshapira@woodbull.ca">jshapira@woodbull.ca</a>

<b>Participant</b>	<b>Contact</b>
Judy Meldrum	<a href="mailto:judithemeldrum@gmail.com">judithemeldrum@gmail.com</a> 33-10 Wentworth Drive Grimsby, Ontario L3M 5G3
Paul Tomlinson (1333890 Ontario Inc)	<a href="mailto:paulwlu@icloud.com">paulwlu@icloud.com</a> 9 Wentworth Drive, #6

	Grimsby, ON 905-945-8332
Ruxandra Bucataru	<a href="mailto:ruxandra@savemainstreet.ca">ruxandra@savemainstreet.ca</a> Phone: 289-235-8173
Margot Smeenk	<a href="mailto:smeenkma@cogeco.ca">smeenkma@cogeco.ca</a> Phone: 647-629-9566

## **Attachment 2: Issues List**

**Note:** the identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Tribunal at the hearing. The extent to which the issues are appropriate, within the jurisdiction of the OLT, or relevant to the determination at the hearing will be a matter of evidence and argument at the hearing.

### **Losani Homes (1998) Ltd. issues relating to the objection filed under subsection 29(5) of the *Ontario Heritage Act***

1. What attributes of the building at 141 Main Street East deem it to be early, rare or unique in the context of Grimsby?
2. Does the building at 141 Main Street East exhibit a high degree of craftsmanship, artistic merit, or technical/scientific achievement?
3. Does the building at 141 Main Street East define the streetscape character?
4. Does the building at 147 Main Street East exhibit a high degree of craftsmanship, artistic merit, or technical/scientific achievement?
5. Does the building at 147 Main Street East include any significant natural features or landmarks?

### **Town of Grimsby**

1. Are the applications consistent with the Provincial Policy Statement (2020) including in particular policies 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.5, 1.4.3, 1.5.1, 1.6.6.2, 1.6.6.7, 1.6.7, 1.7.1 d), 1.8, 2.6.1 and 2.6.2?
2. Do the applications conform with the Growth Plan for the Greater Horseshoe (2019), as amended, including in particular policies 1.2.1, 2.2.1.1, 2.2.1.4, 2.2.2.3, 2.2.6.2, 2.2.6.3, 4.1 and 4.2.7?
3. Do the applications conform with the Region of Niagara Official Plan, including policies 3.D.7, 3.D.10, 4.A.1, 4.C.2.1, 4.C.4.2, 4.G.1, 4.G.3, 4.G.11, 4.I, 4.J, 8.B.13, 9.A, 9.E, 10.C.1.5, 10.C.2.1, and 11.A.1, 11.A.2?
4. Do the applications conform with the Town of Grimsby Official Plan, including policies 1.1, 1.3, 2.1, 2.2, 2.3.2, 2.4.6, 2.5.1, 2.5.4, 2.5.5, 2.6, 2.6.9, 3.4.4, 3.4.5,



3.4.7.2, 3.4.7.4, 3.4.7.8, 3.6.1, 4.5, 5.3, 5.5, 5.6, 7.1, 7.2, 7.3, 8.1, 8.9, 8.18, 9.4 and 9.10?

5. Do the applications provide adequate parking and conform with the Town of Grimsby Zoning By-law in terms of parking provision?
6. Would the proposal result in unacceptable traffic impacts?
7. Do the applications represent good planning?
8. Are the applications appropriate from the perspective of height and massing and scale of the building?
9. Do the applications provide an appropriate transition to the adjacent stable residential neighbourhood?
10. Do the applications contribute to enhancing the streetscape character along Main Street East?
11. Do the applications represent appropriate intensification outside the designated Major Intensification Area?
12. Is the planned function of the proposal appropriate for the Neighbourhood Commercial designation?
13. Has the Appellant demonstrated the technical feasibility of the proposal?
14. Does the proposal adequately and appropriately protect cultural heritage resources?
15. Does the proposal provide sustainable green infrastructure?
16. Are the applications compatible with adjacent uses and the surrounding community?

**Burgess Heritage Group Inc.**

1. Has the development appropriately considered and coordinated with the development of the abutting lands at 133-137 Main Street?

**Attachment 3: Order of Evidence**

1. Losani Homes (1998) Ltd.
2. Burgess Heritage Group Inc.
3. Town of Grimsby
4. Reply of Losani Homes (1998) Ltd.

## Attachment 4

### Attachment to Procedural Order

#### Meaning of terms used in the Procedural Order:

**Party** is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

**NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual, group or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

**Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

**Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

*A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant wishes to address and the submission of the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.*

### **Additional Information**

**Summons:** *A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

**The order of examination of witnesses:** *is usually direct examination, cross-examination and re-examination in the following way:*

- *direct examination by the party presenting the witness;*
- *direct examination by any party of similar interest, in the manner determined by the Tribunal;*
- *cross-examination by parties of opposite interest;*
- *re-examination by the party presenting the witness; or*
- *another order of examination mutually agreed among the parties or directed by the Tribunal.*