

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



ISSUE DATE: August 09, 2019

CASE NO(S): PL180842

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 386823 Ontario Limited
Appellant: CAMPP Windsor Essex Residents Association
Appellant: Fanelli Real Estate (South Airport Lands) Limited Partnership
Subject: Proposed Official Plan Amendment No. 120
Municipality: City of Windsor
LPAT Case No.: PL180842
LPAT File No.: PL180842
LPAT Case Name: CAMPP Windsor Essex Residents Association v. Windsor (City)

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

Appellant: CAMPP Windsor Essex Residents Association
Subject: By-law No. 132-2018
Municipality: City of Windsor
LPAT Case No.: PL180842
LPAT File No.: PL180843

Heard: In writing

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
CAMPP Windsor Essex Residents Association (“CAMPP”)	E. Gillespie I. Flett
386823 Ontario Limited (“386”)	P. McCullough
Fanelli Real Estate (South Airport Lands) (“Fanelli”)	J. Hewitt
City of Windsor (the “City”)	P. Gross W. Vendrasco
Windsor Regional Hospital (“WRH”)	M. Bull K. Mullin

DECISION BY S. JACOBS, K.J. HUSSEY, AND S. TOUSAW AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision deals with motions in writing that were directed by the Local Planning Appeal Tribunal (the “Tribunal”) in its decision issued on April 16, 2019. By way of background, the City of Windsor has adopted the County Road 42 Secondary Plan, consisting of a mix of institutional, employment, and residential uses all located south of Windsor International Airport and west of the Town of Tecumseh. This secondary planning process was prompted by Windsor Regional Hospital’s desire to develop a new regional hospital at County Road 42 and Concession 9. The City adopted Official Plan Amendment No. 120 (“OPA 120”) to implement the secondary plan, and also passed Zoning By-law Amendment No. 132-2018 (the “ZBA”) to establish the necessary zoning for the hospital site.

[2] CAMPP, 386, and Fanelli appealed the City’s adoption of OPA 120 pursuant to s. 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (the “*Planning Act*”), and

CAMPP also appealed the City's passing of the ZBA pursuant to s. 34(19). The Tribunal convened a mandatory Case Management Conference ("CMC") on March 20, 2019 to deal with certain matters relating to the organization of these appeals for a hearing, and issued its decision from that CMC on April 16, 2019 (the "CMC Decision").

[3] In its CMC Decision, the Tribunal directed the parties to file a consolidated issues list within 15 days of the issuance of the decision. The Tribunal further directed that if the parties could not arrive at a consolidated issues list, the appellants must file written motions in accordance with the Tribunal's *Rules of Practice and Procedure* (the "Rules"). Ultimately, the parties could not agree on an issues list, and each appellant filed a written motion, with responses filed by the City and WRH.

[4] The Tribunal also directed the parties to file an Agreed Statement of Facts and Evidence within 45 days of the issuance of the CMC Decision, so that the Tribunal could determine whether it would call witnesses at the oral hearing of the appeals. The parties failed to submit an Agreed Statement of Facts and Evidence.

[5] This Decision disposes of the written motions regarding the issues list, and also addresses the scheduling of the hearing of the appeals.

I. MOTIONS REGARDING THE ISSUES LIST

[6] As noted earlier, the Tribunal received a notice of motion in writing from each of the three appellants to put forward their desired issues lists. Based on the responses filed by the City, and WRH in support of the City's position, it appears that only Fanelli and CAMPP's proposed issues lists are in dispute. The Tribunal will address the issues list of each appellant in turn below.

a. 386's Issues List

[7] The motion by 386 to approve its issues list is unopposed. The Tribunal has reviewed 386's proposed issues and finds that they appropriately focus on issues of

consistency with the *Provincial Policy Statement, 2014* (“PPS”), in line with the Tribunal’s *Planning Act* mandate and its direction in the CMC Decision. The Tribunal will therefore grant 386’s motion, with one modification to its proposed Issue 4, which is currently worded in part as a statement rather than a question. The new issue 4 shall read:

Is the creation and designation of Non-Core Natural Heritage inconsistent with s. 1.1.3.7(b) and s. 1.6.6.7 of the PPS, which mandate the orderly progress of development and imply that alternatives should be considered?

b. Fanelli’s Issues List

[8] In its written motion, Fanelli has proposed three two-part issues. The first part of each issue focuses on the PPS, while the second part focuses on consistency with the County Road 42 Secondary Plan. The City opposes the second part of each issue and proposes that the first part of each issue, relating to consistency with the PPS, should be retained. The Tribunal agrees that this is a reasonable approach, given that the *Planning Act* requires the Tribunal to test the OPA only against the PPS; this was discussed at length in the Tribunal’s CMC Decision. Accordingly, the Tribunal grants Fanelli’s motion in part, and will include only the first part of each issue on the Issues List as suggested by the City in its Responding Motion Record.

c. CAMPP’s Issues List

[9] There is no dispute about CAMPP’s proposed issues list for its appeal of the ZBA. With respect to CAMPP’s proposed issues list for its appeal of OPA 120, the City and WRH request that CAMPP be directed to revise its issues list to: (1) identify the specific policies, schedules and provisions that are under appeal; and (2) delete the reference to Official Plan conformity in its proposed issue 8. The first request relates to the direction of the Tribunal in the CMC Decision that all issues should identify the specific policies or schedules in OPA 120 that are under appeal. CAMPP’s proposed issues list refers generically to OPA 120 throughout. To that end, and to bring efficiency

to these proceedings, the Tribunal directs CAMPP to bring focus to its issues list by specifying which policies, schedules and provisions are under appeal.

[10] While the Tribunal acknowledges CAMPP's right to "appeal all or part of the decision of council" under s. 17(24) of the *Planning Act*, it recommends that CAMPP consider scoping its issues by identifying specific policies, schedules and provisions to make efficient use of its legislated time limit within which to make submissions at the hearing.

[11] CAMPP will have thirty days from the date of issuance of this Decision to either submit a scoped issues list on OPA 120 as outlined above or advise the Tribunal that it wishes to proceed with some or all of its issues pertaining to all of OPA 120. Should there be any dispute in this regard, the parties may raise it in their submissions at the oral hearing of the appeals.

[12] CAMPP's proposed issue 8 provides:

Is OPA 120 inconsistent with the PPS, 2014 policy 4.7 and made further inconsistent by failing to conform to Windsor OP policies 3.2.4.1, 3.2.4.2 and 4.2.5.3, 4.2.5.2 in regards to consultation etc.?

[13] CAMPP submits that, while OPA 120 is not expected to accord with the City's existing Official Plan, it is appropriate to consider procedural concerns related to public participation and consultation in the City's OP that were not amended by OPA 120. In support of this submission, CAMPP relies on various principles of statutory interpretation, including an interpretive approach that avoids internal inconsistencies and ambiguities in a statute. As WRH submits in its response, this interpretive approach applies to statutes, in this case, the *Planning Act*, and CAMPP has not pointed to any inconsistency or absurdity in that legislation.

[14] Regardless, the Tribunal finds that it accords with its authority under the *Planning Act* to allow an issue that refers to inconsistency with a particular provision of the PPS, in this case, policy 4.7. CAMPP's issue 8 will be modified to simply state, "Is OPA 120

inconsistent with PPS policy 4.7?,” which allows CAMPP to make submissions on this potential inconsistency at the oral hearing of the appeals.

[15] For ease of reference, the Tribunal directs the parties to provide a consolidated Issues List that accords with the Tribunal’s disposition on each of the three motions. To allow for incorporation of a more specific issues list from CAMPP, the Tribunal directs the parties to submit the consolidated issues list within 30 days of the issuance of this Decision.

II. HEARING

[16] As noted above, the parties did not submit an Agreed Statement of Facts and Evidence as directed by the Tribunal in the CMC Decision. The Tribunal directed this submission so that the panel could determine whether it would call witnesses at the oral hearing. The Tribunal continues to require an Agreed Statement of Facts and Evidence, and once again directs that it be submitted within 30 days of the issuance of this Decision.

[17] To be clear, the Tribunal understands that the parties fundamentally disagree about the consistency of the OPA and ZBA with the PPS. However, the Tribunal expects that there are also basic areas of consensus among the parties that will assist in bringing efficiency to the hearing of these appeals, and that these can be provided in the Agreed Statement of Facts and Evidence.

[18] However, the panel will not allow the parties’ failure to submit this document to delay the hearing process. The Tribunal estimates that, given the time required for submissions by the parties, and the possibility that the Tribunal could examine witnesses, the hearing should require no more than three days.

[19] Accordingly, the hearing is scheduled to commence at **10 a.m. on Tuesday, October 8, 2019** at:

**Windsor City Hall, Council Chambers
350 City Hall Square West
Windsor, ON N9A 6S1**

No further notice of the hearing is required.

[20] Each party shall be entitled to make oral submissions in accordance with the *Local Planning Appeal Tribunal Act, 2017* and Ontario Regulation 102/18 made thereunder (the “Regulation”). The parties are directed to submit an order of proceedings within 30 days of the issuance of this Decision. The parties shall ensure that any witnesses who provided written affidavits are available to be examined by the Tribunal, and that they have in their possession all materials upon which they relied in arriving at their opinions.

TIMELINE TO DISPOSE OF THE APPEALS

[21] These appeals are subject to the timelines prescribed in the Regulation, which is ten months. In its CMC Decision, the Tribunal determined that it was necessary to suspend the timeline in order to secure a fair and just determination of the appeals and issued a Notice of Postponement by separate Order. The timeline shall resume on the date of the scheduled hearing, October 8, 2019.

ORDER

[22] The directions set out in this Decision are so ordered.

[23] This panel is seized subject to the Tribunal’s scheduling requirements. The Tribunal may be spoken to regarding the ongoing case management of this matter.

"S. Jacobs"

S. JACOBS
MEMBER

"K.J. Hussey"

K.J. HUSSEY
VICE-CHAIR

"S. Tousaw"

S. TOUSAW
MEMBER

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

Local Planning Appeal Tribunal

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