

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 14, 2023 **CASE NO(S).:** OLT-22-004060
OLT-22-004061
OLT-22-004809

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

Applicant/Appellant: 200 Wellington Corp.
Subject: Request to amend the Official Plan – Failure to adopt the requested amendment
Description: to permit a 27-unit townhouse development
Reference Number: OPA-2021-06
Property Address: 200 Wellington Street W
Municipality/UT: Aurora/York
OLT Case No: OLT-22-004060
OLT Lead Case No: OLT-22-004060
OLT Case Name: 200 Wellington Corp. v. Regional Municipality of York

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

Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description: to permit a 27-unit townhouse development
Reference Number: ZBA-2021-08
Property Address: 200 Wellington Street W
Municipality/UT: Aurora/York
OLT Case No: OLT-22-004061
OLT Lead Case No: OLT-22-004060

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject: Site Plan
 Description: To permit a 27 unit townhouse development
 Reference Number: SP-2022-06
 Property Address: 200 Wellington Street W
 Municipality/UT: Aurora/York
 OLT Case No.: OLT-22-004809
 OLT Lead Case No.: OLT-22-004060

Heard: March 14, 2023 by Video Hearing

APPEARANCES:

Parties

Counsel

200 Wellington Holding Corp.

Amber Stewart

Town of Aurora

Kacie Layton

York Region

Samantha Whalen

MEMORANDUM OF ORAL DECISION DELIVERED BY G.A. CROSER AND SHARYN VINCENT ON MARCH 14, 2023 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This settlement hearing decision arose from the failure of the Town of Aurora (“Town”) to make a decision on applications submitted by 200 Wellington Corp. (“Appellant”) for an Official Plan Amendment (“OPA”), Zoning By-law Amendment (“ZBLA”), and Site Plan Approval (“SPA”) to facilitate development on the lands known municipally as 200 Wellington Street West (the “Subject Lands”).

[2] The Subject Lands are a vacant lot with an existing tree lined driveway from Wellington Street West (“WSW”). A tributary of Tannery Creek intersects the southern

boundary of the Subject Lands, parallel to WSW. The proposal is to redevelop the site with 27 townhouse units in five blocks with access via a private driveway and private road accessible via WSW.

[3] The Subject Lands are currently designated as 'Suburban Residential' in the Town Official Plan "Town OP" and are zoned Detached First Density Residential (R-1) in the Town's Zoning By-law 6000-17. The site has access to full municipal water and sanitary services.

[4] The Subject Lands are designated "Urban Area" on Map 1 of the York Region Official Plan "YROP". The Region of York is the upper tier municipality and YROP policies require that development be directed to urban areas and intensification with the Urban Area will accommodate a significant portion of the planned growth in the Region. The Subject Lands are also located within a two-to-five-year Wellhead Protection Area and within an Area of High Aquifer Vulnerability.

ISSUES

[5] The issue faced by the Parties related to whether the Subject Lands could be developed in such a manner as to protect the environmentally sensitive lands along the site's boundary with WSW.

EVIDENCE AND SUBMISSIONS

[6] At the onset of the hearing, Counsel for the Appellant noted that while an agreement had been reached with the Town and Region with respect to the OPA and the ZBA, a consensus had not yet been reached on the SPA. It was requested that the Tribunal acknowledge and approve the settlement in principle for the OPA and ZBA, which would then be held in abeyance until an agreement was reached on the SPA.

[7] The Appellant filed an affidavit affirmed by the Appellant's planner Nick Pileggi March 13, 2023, in support of the proposed settlement. Mr. Pileggi also provided oral testimony at the settlement hearing. The Tribunal qualified him to provide opinion evidence in the area of land use planning.

[8] Mr. Pileggi opined that the proposed OPA and ZBLA are consistent with the PPS. He said the proposed instruments promote an efficient development which provides an appropriate range and mix of housing types to meet market-based housing needs. The proposal was an example of intensification and compact development within an existing settlement area.

[9] Mr. Pileggi then addressed the Growth Plan; he stated that the application was an example of intensification in an appropriate location. He noted that the development was in an urban area well serviced by transit and existing infrastructure. He opined that the application supported the land use goals of the Growth Plan and conformed with the policies contained therein.

[10] The Subject Lands are located within the Oak Ridges Moraine, and as a result, the policies of the Oak Ridges Moraine Conservation Plan "ORMCP" are applicable. Mr. Pileggi noted that the Subject Lands are within the 'Settlement Area' of the ORMCP, which allows urban uses and development. Mr. Pileggi pointed out that the purpose of the 'Settlement Area' is to focus and contain urban growth by encouraging the development of communities that provide residents with transportation options and a full range of housing through intensification and redevelopment within existing urban areas.

[11] Mr. Pileggi stated that development within the 'Settlement Area' of the ORMCP must minimize the encroachment and impact of development on the ecological and hydrological features of the ORMCP area.

[12] Mr. Pileggi went on to explain that a Natural Heritage Evaluation ("NHE") was prepared on the Subject lands. The NHE demonstrated that, amongst others:

- a) There will be no development within the key natural heritage feature and key hydrologic feature on the Subject Lands;
- b) The proposed development will not have adverse impacts to the form or function of the watercourse;
- c) There is no impact to these features, except the relocation of the driveway and associated culvert crossing;

[13] The minimum Vegetation Protection Zone (“VPZ”) for the watercourse was determined in consultation with the Lake Simcoe Region Conservation Authority (“LSRCA”).

[14] Mr. Pileggi opined that the proposal conformed with the ORMCP, in that: the proposed use is permitted within a Settlement Area and will facilitate a more compact use of land through transit-supportive intensification. He further opined that the VPZ will maintain, improve, or restore the health, diversity, size and connectivity of the Subject Lands key natural heritage features, key hydrologic features, and the related ecological functions as set out in the ORMCP.

[15] Mr. Pileggi opined that the proposed OPA conforms with the YROP. He opined that in accordance with Chapter 5 of the YROP, the proposed development meets the requirements of accessibility and compatibility with and transition to surrounding land uses.

[16] With respect to the Town OP, Mr. Pileggi explained that the Subject Lands were designated Suburban Residential which only permits detached dwellings. Mr. Pileggi pointed out that the Town’s OP had not yet been brought into conformity with the new Provincial policies and the YROP. He opined that the proposed development is well suited for intensification in that it is located on an arterial roadway, near transit routes,

commercial uses, schools, and will supply a relatively new housing type to the immediate area.

[17] As such, the subject application, in Mr. Pileggi's expert view, was consistent with and conformed to the intent and objectives of the YROP, and was generally consistent with the intent and objectives of the Town OP. He also noted that the development would assist both the Town and Region in meeting goals and objectives regarding intensification targets and would make more efficient use of existing and planned infrastructure.

[18] The Subject Lands are presently zoned Detached First Density Residential by the Town's Zoning By-law 6000-17, which includes the tributary that runs parallel with WSW. Mr. Pileggi stated that the proposed ZBLA will rezone the Subject Lands to R8-E-Townhouse Dwelling Residential and EP – Environmental Protection. He opined that this would facilitate site-specific development as well as the long-term protection of the site's natural heritage features.

[19] Mr. Pileggi opined that the proposed development has regard to the applicable matters of provincial interest set out in s. 2 of the *Planning Act*, including those related to the orderly development of safe and healthy communities, the provision of a full range of housing, the appropriate location for growth and development, and the promotion of well-designed built form.

FINDINGS

[20] Based on Mr. Pileggi's opinion evidence, the Tribunal finds that there will be no built form development within the Subject Land's natural heritage feature and no adverse impact to the form or function of the waterway. The relocation of the driveway and culvert will not have a negative impact on the form or function of the Tributary of the Tannery Creek. The ZBLA draft instrument identifies and proposes to zone the front

portion of the Subject Lands adjacent to WSW as Environmental Protection for the VPZ, protecting this area in perpetuity.

[21] The Tribunal finds that the proposed OPA and ZBLA are consistent with the PPS and conform with the Growth Plan, ORMCP, YROP, Town OP and that the ZBLA is appropriate to implement the Municipal, Region and Provincial policy directions.

[22] The Tribunal has had regard to the applicable policies and guidelines and the matters of provincial interest in s. 2 of the *Planning Act* as well as the information and materials that Town Council received in relation to the matter. The Tribunal finds that the proposed OPA and ZBLA constitute good planning.

INTERIM ORDER

[23] The Tribunal hereby allows the appeal in part and approves the draft Official Plan and Zoning By-law Amendments in principle, appended hereto as **Attachments 1 and 2** respectively. The Tribunal will withhold the Final Order until advised by the Parties that an agreement has been reached on the SPA, and that the OPA and ZBLA are in final form.

“G.A. Croser”

G.A. CROSER
MEMBER

“Sharyn Vincent”

SHARYN VINCENT
VICE-CHAIR

Ontario Land Tribunal

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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

This is Exhibit Q to the Affidavit of Nick Pileggi, MCIP, RPP, sworn remotely on March 13, 2023.



A Commissioner for taking oaths,
etc.

The Corporation of the Town of Aurora

By-law Number XXXX-23

Being a By-law to amend By-law Number 5285-10, as amended, to adopt Official Plan Amendment No. XX.

Whereas on September 28, 2010, the Council of The Corporation of the Town of Aurora (the "Town") enacted By-law Number 5285-10, as amended, to adopt the Official Plan for the Town of Aurora (the "Official Plan");

And whereas on XX, 2023, the Ontario Land Tribunal (the "OLT") issued a Memorandum of Oral Decision and Order, under OLT Case No. OLT-22-004060 (the "Order") approving an amendment to the Official Plan respecting the lands municipally known as 200 Wellington Street West, following an appeal pursuant to section 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "Planning Act");

Now therefore the Official Plan is amended by the Ontario Land Tribunal as follows:

1. Official Plan Amendment No. XX to the Official Plan, attached and forming part of this by-law, be and is hereby adopted.
2. This By-law shall come into full force subject to compliance with the provisions of the Planning Act and subject to compliance with such provisions, this By-law will take effect from the date of final passage hereof.

Pursuant to the Order of the Ontario Land Tribunal issued on XX day of XX, 2023, under OLT Case No. OLT-22-004060

By-law Number XXXX-23

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Amendment No. XX
To the Official Plan for the Town of Aurora

Statement of Components

Part I – The Preamble

1. Introduction
2. Purpose of the Amendment
3. Location
4. Basis of the Amendment

Part II – The Amendment

1. Introduction
2. Details of the Amendment
3. Implementation and Interpretation

Part III – The Appendices

Part I – The Preamble**1. Introduction**

This part of the Official Plan Amendment No. XX (the "Amendment"), entitled Part I – The Preamble, explains the purpose and location of this Amendment, and provides an overview of the reasons for it. It is for explanatory purposes only and does not form part of the Amendment.

2. Purpose of the Amendment

The purpose of this site-specific Official Plan Amendment is to permit a higher density land use being townhomes within the Suburban Residential designation.

3. Location

The lands affected by this Amendment are located on the north side of Wellington Street West, east of Bathurst Street, municipally known as 200 Wellington Street West. The property has a lot area of approximately 0.65 hectares (1.6 acres); and are legally described as Part of Lot 3, Registered Plan 583, Town of Aurora, Regional Municipality of York (the "Subject Lands").

4. Basis of the Amendment

The basis of the Amendment is as follows:

- 4.1 The Official Plan Amendment application (file: OPA-2021-06) and Zoning By-law Amendment application (file: ZBA-2021-08) were submitted to the Town for consideration on November 2, 2021, to permit the site-specific Official Plan Amendment on the Subject Lands.
 - 4.2 Related Site Plan application (file: SP-2022-06) was submitted to the Town for consideration on June 30, 2022.
 - 4.3 A Statutory Public Planning Meeting was held by Town Council on April 12, 2022, to obtain input from members of the public and Town Council.
 - 4.4 The site plan consists of 27 townhouses, along with 6 visitor parking spaces.
 - 4.5 The Official Plan designates the Subject Lands as Suburban Residential. An amendment is required to allow the proposed townhouses.
 - 4.6 An amendment is also required to redesignate the lands along the Wellington Street West frontage to Environmental Protection.
 - 4.7 The implementing Zoning By-law Amendment will create appropriate residential zoning over the Subject Lands to correspond with the proposed Official Plan Amendment designations. Appropriate development provisions and performance standards for the development of the Subject Lands will be incorporated.
 - 4.8 The Subject Lands are located within a predominantly residential area with a different character along Wellington Street West that includes higher densities, different residential forms and commercial and institutional uses (including schools).
 - 4.9 The site-specific policies as outlined under Part II are considered to be compatible, appropriate and complementary land use and built form within the surrounding area.
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By-law Number XXXX-23

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Part II – The Amendment

1. Introduction

This part of the Amendment, entitled Part II – The Amendment, consisting of the following text and attached maps, designated as Schedule “A” constitutes Amendment No. XX to the Official Plan.

2. Details of the Amendment

The Official Plan be and is hereby amended as follows:

Item (1): That the subject lands be redesignated, as shown on the attached Schedule “A” attached hereto and forming part of this plan, from “Suburban Residential” to “Environmental Protection”.

Item (2): That Section 16.0, “Site Specific Policies” of the Town of Aurora Official Plan be and is hereby amended by adding to the end thereof, the following subsection:

“The following policies apply to the lands designated ‘Suburban Residential’ on Part of Lot 3, Registered Plan 583, Parts 1 and 6, Plan 65R38654 (200 Wellington Street West), Town of Aurora, Regional Municipality of York (as shown on the attached Schedule “A”)

- a) On lands designated ‘Suburban Residential’ within the area shown as the Subject Lands on the attached Schedule “A” attached hereto and forming part of this plan, the policies as outlined under Section 8.2 ‘Suburban Residential’ shall apply, with the following exceptions:
 - i. Notwithstanding the policies as outlined in Section 8.2 a) and b), ground related residential units (townhouses) accessed via a private road/street shall be permitted to a total of 27 townhouse units.”

3. Implementation

This Amendment has been considered in accordance with the provisions of the Official Plan. The implementation and interpretation of this Amendment shall be in accordance with the respective policies of the Official Plan.

Part III – The Appendices

Schedule “A” – Subject Lands

By-law Number XXXX-23

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Explanatory Note

RE: Official Plan Amendment No. XX

By-law Number XX-23 has the following purpose and effect:

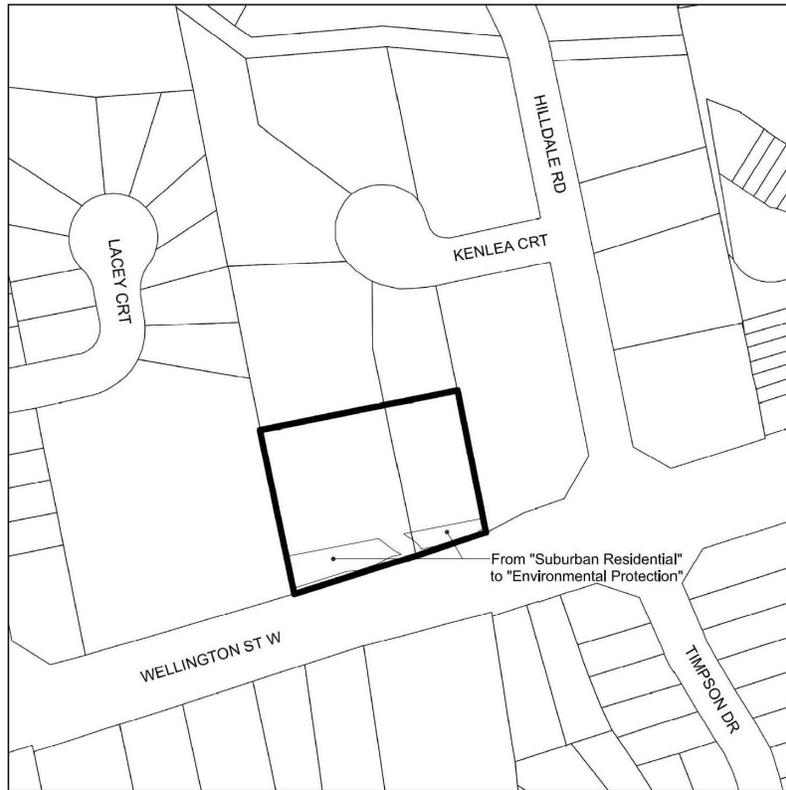
The purpose of this amendment is to amend the Town of Aurora Official Plan, as amended, for the lands shown in the attached Schedule "A" to permit 27 townhouse units in the 'Suburban Residential' designation proposed for the Subject Lands and to designate a portion of the lands to "Environmental Protection". All other provisions of the Official Plan will continue to apply.

Schedule "A"

Location: 200 Wellington Street West; Part of Lot 3, Registered Plan 583, Town of Aurora, Regional Municipality of York

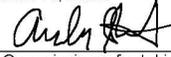


Subject lands designated as "Suburban Residential" with portions redesignated to "Environmental Protection"



ATTACHMENT 2

This is Exhibit R to the Affidavit of Nick Pileggi, MCIP, RPP, sworn remotely on March 13, 2023.



The Corporation of the Town of Aurora A Commissioner for taking oaths, etc.

By-law Number XXXX-23

Being a By-law to amend By-law Number 6000-17, as amended, respecting the lands municipally known as 200 Wellington Street West (200 Wellington Holding Corp., File No. ZBA-2021-08).

Whereas under section 34(1) of the *Planning Act*, R.S.O.1990, c. P.13, as amended (the "Planning Act"), zoning by-laws may be passed by the councils of local municipalities to prohibit and regulate the use of land, buildings and structures;

And whereas on January 29, 2018, the OMB made an order, in accordance with subsection 34(31) of the Planning Act, providing that any part of the Zoning By-law not in issue in the appeal shall be deemed to have come into force on the day the Zoning By-law was passed;

And whereas 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 OMB or Local Planning Appeal Tribunal or LPAT is deemed to be a reference to the Tribunal;

And whereas on XX, 2023, the Tribunal issued a Memorandum of Oral Decision and Order, under OLT Case No. OLT-22-004060 (the "Order") approving an amendment to the Zoning By-law respecting the lands municipally known as 200 Wellington Street West, following an appeal pursuant to section 34(11) of the Planning Act;

Now therefore the Zoning By-law is amended by the Ontario Land Tribunal as follows:

1. That the Zoning By-law be and is hereby amended to replace the "Detached First Density Residential (R1)" zoning category applying to the lands shown on Schedule "A" attached hereto and forming part of this by-law with "Townhouse Dwelling Residential (R8-XX) Exception Zone", and "Environmental Protection (EP)".
2. That the Zoning By-law be and is hereby amended to add the following:

Parent Zone: R8 Exception No.: XX	Map: 4	Previous Zone: R1	Previous By-laws: N/A OLT Case No: OLT-22-004060
Municipal Address: 200 Wellington Street West			
Legal Description: Part of Lot 3, Registered Plan 583, Parts 1 and 6, Plan 65R-38654			

24.XX.1 Zone Requirements

24.XX.1.1 Siting Specifications

Lot Area per dwelling (minimum)	140 m ²	
Lot Frontage per unit (minimum)	5.5 metres	
Front Yard (minimum)	5.3 metres	
Interior Side Yard (minimum)	0 metres ; 1.2 metres for end units	
Side Yard to Private Road (minimum)	1.6 metres	
Maximum Height	11 metres	
Visitor Parking (minimum)	6 spaces	
24.XX.1.2 Yard Encroachments Permitted		
Notwithstanding the provisions of Section 4.20 (Yard Encroachments Permitted), the following standards shall apply:		
Structure or Feature: Open porches, uncovered terraces and decks (3.2 metres high or less)	Applicable Yard(s): Front and Exterior Side Yard	Maximum Encroachment into a Minimum Yard: 3.0 metres In no case shall be closer than 3.0 metres from the Front Lot Line
24.XX.1.3 Ingress and Egress		
Notwithstanding the provisions of Section 5.5.4 (Ingress and Egress), the following standard shall apply:		
The maximum width of any joint ingress or egress <i>Driveway</i> measured along the <i>Street Line</i> shall be nine and a half (9.5) metres.		

3. That all other terms, provisions, and existing amendments of the Zoning By-law remain the same.
4. That this by-law shall come into full force subject to compliance with the provisions of the Planning Act and subject to compliance with such provisions, this By-law will take effect from the date of the Order.

Pursuant to the Order of the Ontario Land Tribunal issued on the XX day of XX, 2023, under OLT Case No. OLT-22-004060



By-law Number XXXX-23

Page 3 of 4

Explanatory Note

Re: By-law Number XXXX-23

By-law Number XXXX-23 has the following purpose and effect:

To amend By-law Number 6000-17, as amended, the Zoning By-law in effect in the Town of Aurora, to rezone the subject lands from "Detached First Density Residential (R1)" to "Townhouse Dwelling Residential (R8-XX) Exception Zone", and "Environmental Protection (EP)".

The effect of this zoning amendment is to permit the development of 27 townhouse units with site-specific performance standards.

Schedule "A"

Location: 200 Wellington Street West; Part of Lot 3, Registered Plan 583, Parts 1 and 6, Plan 65R-38654, Town of Aurora, Regional Municipality of York



Lands to be rezoned from "Detached First Density Residential (R1)" zone to "Townhouse Dwelling Residential (R8-XX) Exception Zone", and "Environmental Protection (EP)"

