

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 20, 2023

CASE NO(S):

OLT-21-001723

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

Applicant and Appellant:	Spallacci Contracting Ltd.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	"Neighbourhoods" (High Density Residential)
Proposed Designation:	"Neighbourhoods" (High Density Residential)
Purpose:	To Permit a mixed-Use redevelopment with 3 residential towers
Property Address/Description:	299-307 John Street South & 97 St. Joseph Drive
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-18-004
OLT Lead Case No.:	OLT-21-001723
OLT Case No.:	OLT-21-001723
OLT Case Name.:	Spallacci Contracting Ltd. v. Hamilton (City)

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

Applicant and Appellant:	Spallacci Contracting Ltd.
Subject:	Application to amend Zoning By-law No. 6593 – Neglect or Refusal of application by the City of Hamilton
Existing Zoning:	"E-3/S-1512" District- High Density Multiple Dwellings
Proposed Zoning:	"E/S-1512" (Multiple Dwellings, Lodges, etc.) District and "E" (Multiple Dwellings, Lodges, etc.
Purpose:	To Permit a mixed-Use redevelopment with 3 residential towers

Property Address/Description:	299-307 John Street South & 97 St. Joseph Drive
Municipality:	City of Hamilton
Municipal File No.:	ZAC-18-009
OLT Lead Case No.:	OLT-21-001723
OLT Case No.:	OLT-21-001724

Heard: May 4, 2023 by video hearing

APPEARANCES:

Parties

Spallacci Contracting Ltd.

City of Hamilton

St. Joseph's Healthcare Hamilton, A
Division of St. Joseph's Health System

Niagara Escarpment Commission

Counsel

Meaghan Barrett

Patrick MacDonald

Anna Toumanians

Ken Hare

DECISION DELIVERED BY KURTIS SMITH AND ERIC S. CROWE AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

BACKGROUND

[1] This was a Settlement Hearing with respect to an appeal filed by Spallacci Contracting Ltd. ("Appellants") regarding the failure of the City of Hamilton ("City") to make a decision within the timeframe prescribed in the *Planning Act* ("Act"). The subject Applications concern proposed Official Plan ("OPA") and Zoning By-law ("ZBA") amendments relating to the property municipally known as 299-307 John Street South and 97 St. Joseph's Drive ("Subject Property").

[2] The Subject Property is generally rectangular in shape, 0.85 hectares in size, located on the east side of John Street between St. Joseph's Drive and Charlton Avenue East. Currently there is a five-storey multiple dwelling and privately owned surface parking lot on the Subject Property. The site is generally flat yet has a sloped terrain where the southerly portion of the lands are higher along St. Joseph's Drive, sloping down more than 10 metres ("m") to the north end of the Subject Property at Charlton Avenue.

[3] The original proposed development as submitted on December 22, 2017, was to permit a mixed-use development consisting of three high-rise towers, 26, 30, and 36 storeys atop a common five (5) storey shared podium. The original proposed development included 923 residential units and 1,476.3 square metres ("m²") of commercial area.

[4] Originally the City required the Appellants to amend the Urban Hamilton Official Plan ("UHOP") to permit the requested densities for the proposed development. However, on November 4, 2022, the UHOP was amended and approved OPA No. 167 by the Ministry of Municipal Affairs and Housing, which removed the density limits on a site-specific basis for lands within the Neighbourhood designation for which the Subject Property resides. As a result of OPA No. 167 an OPA is no longer required, and the Appellants have withdrawn the appeal of the OPA.

[5] At the first and only Case Management Conference ("CMC"), St. Joseph's Healthcare Hamilton, A Division of St. Joseph's Health System ("St. Joseph's") and the Niagara Escarpment Commission ("NEC") were granted party status to the matter and a ten-day hearing was scheduled.

[6] In March of 2023 the Appellant provided the City, NEC, and St. Joseph's with prejudice settlement plans ("Settlement Proposal") which represent the eighth iteration of the plans for the Subject Property. Subsequently, NEC and St. Joseph's executed

separate Minutes of Settlement (“MOS”) with the Appellant.

THE SETTLEMENT PROPOSAL

[7] The Settlement Proposal in front of the Tribunal which contemplates the ZBA to permit the following:

- a. Maximum building height for all three residential towers be 192 metres above sea level (“masl”)/20 storeys;
- b. 723 residential units and 1,587 m² of commercial space; and
- c. 708 vehicle parking spaces contained in an underground garage.

HEARING

[8] To support the proposal, the sole witness called was Mr. Matt Johnston, a land use planner who, upon review of his *Curriculum Vitae* and Acknowledgement of Expert’s Duty form, was qualified by the Tribunal to provide opinion evidence in land use planning and urban design.

[9] Mr. Johnston provided the Tribunal with an extensive overview of the neighbourhood context (Exhibit 3, page 2) which finds the area is currently in transition and has many different built forms.

[10] Mr. Johnston reviewed the Act with regard to the matters of provincial interest set out in section 2. Specifically, he opined that the proposal will achieve the protection of ecological systems, including natural areas, features and functions (s. 2.a), the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest (s. 2.d), the orderly development of safe and healthy communities (s. 2.h), the adequate provision of a full range of housing, including affordable housing (s.

2.j), the resolution of planning conflicts involving public and private interests (s. 2.n) and the promotion of built form that is well-designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant (s. 2.r).

[11] As it relates to the Provincial Policy Statement 2020 (“PPS”), Mr. Johnston opined that the proposed development is consistent with PPS policy objectives, including healthy, livable and safe communities that are sustained by promoting efficient development and land use patterns while avoiding development and land use patterns which may cause environmental or public health and safety concerns. In his opinion, the ZBA is consistent with the PPS, in particular sections 1.1.1, 1.1.3, 1.2, 1.4, 1.6, 1.7, 1.8 and 2.

[12] In Mr. Johnston’s opinion, the Settlement Proposal will provide a range and mix of residential types including 73 studio bedroom, 213 (1) one bedroom, 173 (1) one bedroom + den, 194 (2) two bedroom, and 70 (2) two bedroom + den units. Of those units, 59 of them that are within the podium are part of the tenant assistance and relocation plan (Exhibit 3, page 1163) that will assist the City in the loss of affordable rental units for a 15 year period.

[13] Mr. Johnston is further of the opinion that the proposed development conforms with the Growth Plan for the Greater Golden Horseshoe 2020 (“GP”) as it supports the achievement of complete communities designed to support healthy and active living and to meet people’s needs for daily living (s 1.2.1) and that the vast majority of growth shall be directed within the delineated built boundary and strategic growth areas of the settlement areas (s.2.2.1.2). Mr. Johnston testified that the settlement proposal conforms with sections 1.2.1, 2.1, 2.2.1, 2.2.2, 2.2.6, 3, and 4 of the GP.

[14] Within the Niagara Escarpment Plan (“NEP”) the Subject Property is defined as Urban Area. As required by Section 3 (5) of the Act, it is the opinion of Mr. Johnston that

the Settlement Proposal conforms to the policies of the NEP and does not present adverse impacts on the scenic resources of the Niagara Escarpment.

[15] As it relates to Part 1.7.5.12 of the NEP which states, all development should be of an urban design compatible with scenic resources of the Escarpment. Where appropriate, provision for maximum heights, adequate setbacks and screening are required to minimize the visual impacts of the urban development.

[16] Mr. Johnston reviewed for the Tribunal a series of visual renderings (Exhibit 3, page 435) of the Settlement Proposal in relation to the Escarpment. The renderings validated that the proposed towers at a height of 192 masl and the use of dark colours for the parapet, roof deck and mechanical suites on top of the buildings will not visually impact the scenic resources of the Escarpment. Mr. Johnston is of the opinion that the settlement proposal conforms harmoniously with the environment and does not present adverse impacts on the scenic resources of the Niagara Escarpment.

[17] In preparation to the hearing, Mr. Johnston prepared an in-depth analysis of the UHOP as it relates to the ZBA (Exhibit 3, page 34-49). As noted above, Amendment No. 167 of the UHOP removed the density limits on a site-specific basis for lands within the Neighbourhood designation for which the subject property resides.

[18] Mr. Johnson testified that the settlement proposal conforms to the UHOP as it provides intensification on an underutilized site (e.2.4.11), has direct access to minor arterial and collector roads (e.3.6.7.a), preserves view corridors more effectively than the as-of-right massing permissions (e.3.6.7.c), and has been designed to respect and maintain or enhance the streetscape patterns (b.2.4.2.4).

[19] Finally, Mr. Johnston addressed the concerns of St. Joseph's, which is their ability to expand their campus over time and the noise and nuisance that could be endured over the course of construction of the Proposed Development. Mr. Johnston

testified that the Proposed Development would not hinder St. Joseph's ability to build in the future and that a construction management plan between the Applicant and City will be adhered to and will be shared with St. Joseph's.

[20] Mr. Johnston concluded that the ZBA has regard for matters of Provincial Interest, is consistent with the PPS, fully conforms with the GP, and conforms with the goals and objectives of the UHOP as modified by OPA No. 167. He is of the opinion that the ZBA is good planning and should be approved.

FINDINGS

[21] The Tribunal accepts the uncontroverted planning evidence and opinions of Mr. Johnston and is satisfied that the ZBA is consistent with the PPS, and conforms with the GP, NEC and UHOP. The Tribunal is satisfied that the proposed development represents good planning in the public interest and has appropriate regard for matters of Provincial interest, specifically as the development will intensify an under-utilized site, provides a mix of residential types, and will not obstruct the views of the Niagara Escarpment.

ORDER

[22] **THE TRIBUNAL ORDERS** that the appeal is allowed in part and By-law No. 05-200 of the City of Hamilton is hereby amended as set out in Attachment 1 to this Order. The Tribunal authorizes the municipal clerk of the City of Hamilton to assign a number to this by-law for record keeping purposes.

"Kurtis Smith"

KURTIS SMITH
MEMBER

"Eric S. Crowe"

ERIC S. CROWE
MEMBER

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

CITY OF HAMILTON

BY-LAW NO. - ____

To Amend Zoning By-law No. 05-200, Respecting Lands Located at 299-307 John Street South and 97 St. Joseph's Drive, in the City of Hamilton

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the *City of Hamilton Act*, 1999, S.O. 1999 Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Council of the City of Hamilton, in adopting Item ____ of Report 20- ____ of the Planning Committee at its meeting held on the ____ day of _____ 2020, which recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan, upon finalization of Official Plan Amendment No. ____;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map No. ____ of Schedule "A" – Zoning Maps, to Zoning By-law No. 05-200 is hereby further amended as follows:
 - (a) by adding to the City of Hamilton Zoning By-law No. 05-200, the lands the extent and boundaries of which are shown on Schedule "A" to this By-law
 - (b) by establishing a Mixed Use Medium Density (C5, ____) Zone, Modified, to the lands, the extent and boundaries of which are shown hereto annexed as Schedule "A"; and,
2. That Schedule "C" – Special Exceptions of Zoning By-law No. 05-200, as amended, is hereby further amended by adding the following:

____ Within the lands zoned Mixed Use Medium Density (C5, ____) Zone, identified on Map No. ____ of Schedule "A" and described as 299-307 John Street South & 97 St. Joseph's Drive, the following special provisions shall apply:

- a) That the front lot line shall be John Street South.
- b) Section 5.2 b) iii) shall not apply.
- c) Notwithstanding Section 5.2 i), the minimum two-way aisle width at a 90-degree parking angle shall be 5.85 metres.
- d) Section 5.2.1 shall not apply to a yard abutting Charlton Avenue East.

e) In addition to the permitted uses outlined in Section 10.5.1, a Public Parking Lot shall be included as a permitted use.

f) Notwithstanding Sections 4.6.e), 10.5.1.1(i)1., 10.5.3a)(i), 10.5.3b), 10.5.3d), and, 10.5.3i) the following regulations shall apply:

Minimum Setback to a Street Line	0.0 metres, except 1.5 metres where a building exceeds 139.00 MASL in height
Minimum Rear Yard	0.9 metres
Maximum Balcony Encroachment	A balcony may encroach into any required yard to a maximum of 1.75 metres
Maximum Building Height (Podium)	139.00 MASL
Maximum Building Height (Towers)	192.00 MASL
Planting Strip Requirements	Where a property line abuts a property lot line within a Residential Zone or an Institutional Zone and not a Laneway, a minimum 1.0 metre wide Planting Strip shall be provided and maintained.

g) A minimum distance of 17.0 metres shall be provided and maintained between each habitable portion of a building above 136.0 MASL.

h) Notwithstanding Section 5.6, the following regulations shall apply:

Minimum Parking Rate for Dwelling Units less than 50.0 square metres in gross floor area	0.3 spaces/unit
Minimum Parking Rate for Dwelling Units greater than 50.0 square metres in gross floor area	0.3 spaces/unit for units 1 – 3
	0.70 spaces/unit for units 4 – 14
	0.85 spaces/unit for units 15 – 50
	1.0 spaces/unit for units 51+
Minimum Parking Rate for Commercial	0.0 spaces

Minimum Public Parking 66.0 spaces
Spaces Provided

3. That Schedule "D" – Holding Provisions, of By-law No. 05-200, be amended by adding the additional Holding Provision as follows:

HXX Notwithstanding Section 10.5 of this By-law, within lands zoned Mixed Use Medium Density (C5, XXX) Zone on Map No. ____ on Schedule "A" – Zoning Maps, and described as 299-307 John Street South and 97 St. Joseph's Drive, Hamilton, no development shall be permitted until such time as:

- a. The Owner submit a Watermain Hydraulic Analysis to the satisfaction of City's Director, Growth Management and Chief Development Engineer.

4. The By-law No. 05-200 is amended by adding this by-law to Section__ as Schedule__;
5. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED AND ENACTED this ____ day of _____, 2023.

Mayor

Clerk

ZAC-23-__