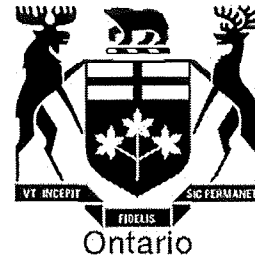


Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



18-112-LPAT-01

18-114-LPAT-01

ISSUE DATE: August 14, 2019

CASE NO(S): PL180548

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: Brown Wharf Development Corp. et al
Appellant: Fengate Hamilton Lands GP Inc. et al
Subject: Proposed Official Plan Amendment No. OPA 102
Municipality: City of Hamilton
OMB Case No.: PL180548
OMB File No.: PL180548
OMB Case Name: Brown Wharf Dev. Corp et al v. Hamilton (City)

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

Appellant: Brown Wharf Development Corp. et al
Appellant: Fengate Hamilton Lands GP Inc. et al
Appellant: Victor Veri
Subject: By-law No. BL 18-114
Municipality: City of Hamilton
OMB Case No.: PL180548
OMB File No.: PL180549

Heard: In writing

APPEARANCES:

Parties

City of Hamilton

Counsel

Joanna Wice

**DECISION DELIVERED BY HUGH S. WILKINS AND HELEN JACKSON AND
ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The City of Hamilton (the “City”) passed Official Plan Amendment No. 102 (“OPA No. 102”), which is the City’s Downtown Secondary Plan, and Zoning By-law No. 18-114, which amends the City’s Zoning By-law No. 05-200.

[2] Several parties appealed the passing of OPA No. 102 and Zoning By-law No. 18-114:

- Brown Wharf Development Corp. and Southwest Crossings Limited (“Brown Wharf”) filed site-specific appeals of OPA No. 102 and Zoning By-law No. 18-114;
- Fengate Hamilton Lands GP Inc. and LPF Hamilton Lands LP (“Fengate”) filed site-specific appeals of OPA No. 102 and Zoning By-law No. 18-114; and
- Victor Veri filed a general appeal of the passage of the entire Zoning By-law No. 18-114.

[3] At a Case Management Conference (“CMC”) held on November 22, 2018, the Tribunal was advised that Mr. Veri passed away on August 28, 2018. No person attended this CMC in relation to the Veri appeal. The City stated that it had contacted the Trustee of Mr. Veri’s estate, Elbert Van Donkersgoed, but had not received a reply. Mr. Veri appealed the passage of Zoning By-law No. 18-114, but not OPA No. 102. Procedural directions arising from the November 22, 2018 CMC were ordered and set out by the Tribunal in a Decision issued on January 3, 2019. The purpose of the present Decision is to address the Motion filed by the City as described in paragraph [5] below.

[4] On February 15, 2019, the City filed a motion to dismiss the Veri appeal. On March 19, 2019, the Tribunal received correspondence from Mr. Van Donkersgoed withdrawing the Veri appeal and the Tribunal subsequently closed the file.

[5] On April 4, 2019, the City filed a Motion requesting that the Tribunal partially approve OPA No. 102 and deem the parts of Zoning By-law No. 18-114 that are not at issue in the site-specific Brown Wharf and Fengate appeals to be in force. Specifically, the City requests an Order:

- a. confirming that OPA No. 102 came into effect on the day after the last day for filing a notice of appeal, being June 5, 2018, in accordance with the provisions in s. 17(27) of the *Planning Act*, except on the properties for which OPA No. 102 remains under appeal:
 - 215, 217, 219, 221, 225 and 231 Main Street West, 67 and 69 Queen Street South, 62 and 64 Hess Street South (being the lands under site-specific appeal by Brown Wharf);
 - 44 Hughson Street South, 75 James Street South, and 9 Jackson Street East (being the lands under site-specific appeal by Fengate);
- b. deeming Zoning By-law No. 18-114 to have come into force on the day that it was passed, being May 9, 2018, in accordance with the provisions in s. 34(31) of the *Planning Act*, except on the properties for which Zoning By-law No. 18-114 remains under appeal:
 - 215, 217, 219, 221, 225 and 231 Main Street West, 67 and 69 Queen Street South, 62 and 64 Hess Street South (being the lands under site-specific appeal by Brown Wharf);

- 44 Hughson Street South, 75 James Street South, and 9 Jackson Street East (being the lands under site-specific appeal by Fengate).

Evidence and Submissions

[6] The City filed affidavits sworn by Alissa Mahood, sworn on March 25, 2019, and Shannon McKie, sworn on March 25, 2019, in support of its motion. Both Ms. Mahood and Ms. McKie are land-use planners employed by the City.

[7] Ms. Mahood stated that the Brown Wharf and Fengate appeals are site-specific and identified the properties under appeal in an annotated version of OPA No. 102, which she attached to her affidavit. She opined that it is good planning for OPA No. 102 to come into effect except for the provisions relating to the lands remaining under appeal.

[8] Ms. McKie also stated that the Brown Wharf and Fengate appeals are site-specific and identified the properties under appeal in an annotated version of Zoning By-law No. 18-114, which she attached to her affidavit. She opined that it is good planning for Zoning By-law No. 18-114 to come into effect except for the provisions relating to the lands remaining under appeal.

[9] Neither Brown Wharf nor Fengate opposes the City's motion.

Analysis and Findings

Official Plan Amendment No. 102

[10] In its Notice of Motion, the City relies on s. 17(27) of the *Planning Act* as the basis for its request for an Order confirming that OPA No. 102 came into effect on the day after the last day for filing a notice of appeal, being June 5, 2018. Section 17(27) of the *Planning Act* states:

17(27) If one or more persons or public bodies have a right of appeal under subsection (24) in respect of all or part of the decision of council, but no notice of appeal is filed under that subsection and the time for filing appeals has expired,

- (a) the decision of council or the part of the decision that is not the subject of an appeal is final; and
- (b) the plan or part of the plan that was adopted and that is not the subject of an appeal comes into effect as an official plan or part of an official plan on the day after the last day for filing a notice of appeal.

[11] In the present case, there were two appeals of OPA No. 102 (the Brown Wharf appeal and Fengate OPA appeal). They are both site-specific and there are parts of OPA No. 102 that are not the subject of either of these appeals. Given the site-specific natures of these appeals and based on the evidence of Ms. Mahood, the Tribunal finds that it is good planning to have OPA No. 102 come into force on the lands to which it applies, apart from those subject to these appeals.

Zoning By-law No. 18-114

[12] In its Notice of Motion, the City relies on s. 34(31) of the *Planning Act* as the basis for its request for an Order deeming Zoning By-law No. 18-114 to have come into force on the day that it was passed, being May 9, 2018. Section 34(31) states:

34(31) Despite subsection (30), before all the appeals have been finally disposed of, the Tribunal may make an order providing that any part of the by-law not in issue in the appeal shall be deemed to have come into force on the day the by-law was passed.

[13] In this case, there was a general appeal of the entire Zoning By-law No. 18-114 (the Veri zoning appeal) and two site-specific appeals (the Brown Wharf and Fengate OPA appeals). The general appeal of the entire zoning by-law was withdrawn on March 19, 2019. Given that the remaining appeals are site-specific, many parts of Zoning By-law No. 18-114 are not in issue, and under s. 34(31) they may be deemed by the Tribunal to have come into force on the day the by-law was passed. Given the withdrawal of the Veri zoning appeal and the site-specific natures of the Brown Wharf and Fengate zoning appeals, and based on the evidence of Ms. McKie, the Tribunal

finds that it is good planning for the Tribunal to deem Zoning By-law No. 18-114 to have come into force on the day that it was passed, except regarding the properties for which it remains under appeal.

ORDER

[14] The Tribunal orders that in accordance with s. 17(27) of the *Planning Act*, OPA No. 102 came into effect on the day after the last day for filing a notice of appeal, being June 5, 2018, except on the properties for which OPA No. 102 remains under appeal, namely:

- 215, 217, 219, 221, 225 and 231 Main Street West, 67 and 69 Queen Street South, 62 and 64 Hess Street South (being the lands under site-specific appeal by Brown Wharf); and
- 44 Hughson Street South, 75 James Street South, and 9 Jackson Street East (being the lands under site-specific appeal by Fengate).

[15] The Tribunal further orders that in accordance with s. 34(31) of the *Planning Act*, Zoning By-law No. 18-114 is deemed to have come into force on the day that it was passed, being May 9, 2018, except on the properties for which Zoning By-law No. 18-114 remains under appeal, namely:

- 215, 217, 219, 221, 225 and 231 Main Street West, 67 and 69 Queen Street South, 62 and 64 Hess Street South (being the lands under site-specific appeal by Brown Wharf); and
- 44 Hughson Street South, 75 James Street South, and 9 Jackson Street East (being the lands under site-specific appeal by Fengate).

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

"Helen Jackson"

HELEN JACKSON
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

A constituent tribunal of Tribunals Ontario - Environment and Land Division

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