

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

Applicant(s)/Appellant(s):	ClubLink Corporation ULC
Subject:	Application to amend Zoning By-law No. 2008-250 - Refusal or neglect of the City of Ottawa to make a decision
Existing Zoning:	O1A (Open space, subzone A)
Proposed Zoning:	R1T (Residential First Density Zone), R3V (Residential Third Density Zone), and R5A (Residential Fifth Density Zone) as well as O1 (Parks and open spaces)
Purpose:	To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments
Property Address/Description	7000 Campeau Drive
Municipality:	City of Ottawa
Municipal File/Reference No:	D02-02-19-0123
LPAT Case No.:	PL200195
LPAT File No.:	PL200195
LPAT Case Name:	ClubLink Corporation ULC v. Ottawa (City)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant(s)/Appellant(s):	ClubLink Corporation ULC
Subject:	Proposed Plan of Subdivision - Failure of the City of Ottawa to make a decision
Purpose:	To permit the redevelopment of the lands for residential and open space uses, including 1502 residential units which will be mixed between detached, townhouse and mid-rise apartments
Property Address/Description	7000 Campeau Drive
Municipality:	City of Ottawa
Municipal File/Reference No:	D07-16-19-0026
LPAT Case No.:	PL200195
LPAT File No.:	PL200196

NOTICE OF RESPONSE TO MOTION

THE KANATA GREENSPACE PROTECTION COALITION (the "**KGPC**") hereby responds to the Ontario Land Tribunal (the "**OLT**" or "**Tribunal**") to the motion by ClubLink Corporation ULC (the "**Moving Party**" or "**ClubLink**") dated December 29, 2021 (the "**Motion**").

THE RESPONSE TO MOTION REQUESTS

1. An Order of the Tribunal dismissing the motion; and,
2. Such further and other relief as counsel may advise and the Tribunal may admit.

THE GROUNDS TO BE RELIED UPON IN RESPONSE TO THE MOTION ARE

1. The Kanata Greenspace Protection Coalition (the "**KGPC**") is a not-for-profit corporation which represents the interests of residents of Kanata. The KGPC sought and was granted party status, on consent, on October 9, 2020.

The Restrictive Covenant

2. A restrictive covenant was registered on the lands municipally known as 7000 Campeau Drive in the City of Ottawa (the "**Subject Property**") on January 8, 1997 (the "**Restrictive Covenant**"). The benefited lands of this restrictive covenant includes lands around the Subject Property. Some of these lands are lots that have been developed adjacent to the Subject Property.
3. It is unusual to have a restrictive covenant related to Stormwater Management ("**SWM**") which burdens certain to the benefit of the surrounding lands, such as is the case with the Restrictive Covenant.
4. The result of having the Restrictive Covenant in place is that it has had an effect on the lands surrounding the Subject Property as they were being developed. In developing these lands, and designing their stormwater management system, the

Restrictive Covenant was taken into account, and the design was made to conform to the requirements of the Restrictive Covenant.

5. The process of developing these lands is a process that took place over a number of years and created the SWM system that is currently in place both on the Subject Property, and upstream.
6. To properly review and design an SWM system for a property, there must be a review of the existing conditions. In this case, the existing conditions are at least in part a result of the parameters established by the Restrictive Covenant. To understand the Restrictive Covenant assists in understanding the SWM systems in the benefited lands upstream, and how the runoff from these lands is managed through the Subject Property.
7. A review of the existing conditions is an exercise that will have been undertaken by all the witnesses opining on SWM issues. A review of the Restrictive Covenant provides crucial details in understanding these existing conditions, the reason for which the SWM system of the surrounding lands was created in such a way, and what the expectations are with regard to its performance.
8. Without a review of the Restrictive Covenant, the witnesses will not have a complete picture of how the area designed its SWM system, what criteria that development was designed to meet, and what risks and limitations exist on the Subject Property and surrounding lands. It will have an incomplete picture of the parameters within which it must design its own SWM system.
9. The context that the Restrictive Covenant lends to the history of the subject Property and the surrounding area is both relevant and necessary to understand the realities within which the Subject Property's SWM system must be designed. While the Restrictive Covenant may have been superseded by other documents since it was registered, to ignore this historical document would deprive the witnesses and the Tribunal of an important component of the underlying facts relevant to this matter.

10. Neither Mr. Nuttall nor the KGPC are proposing that the Tribunal can make a decision on the validity of the Restrictive Covenant. However, it is not precluded from considering it as a historically relevant document within the context of how the SWM system in the relevant area was designed, and within which parameters it operates.

Parkland Dedication

11. In his witness statement Mr. Nuttall has referred to the 40% parkland dedication, an area on which the KGPC's planning witness Mr. Dennis Jacobs has opined. It is not unusual for witnesses to review and adopt the findings of other witnesses where it is relevant to their review.

12. Prior to completing his witness statement, Mr. Nuttall reviewed the witness statement of Mr. Jacobs and, where appropriate and relevant to his review, adopted the findings.

Conclusion

13. The witnesses must review all evidence necessary to offer their expert opinion. This includes, in the case of those experts opining on the SWM system, a review of the Restrictive Covenant, and the effect that it has had on the Subject Property and the surrounding lands. To ignore this evidence would not provide the Tribunal with the best evidence on this matter.

14. Should ClubLink have any specific objections to the testimony of any witness with regard to either the Restrictive Covenant or the 40% parkland dedication, these can be addressed on a case by case basis, as the evidence is being presented.

Statutory and Other Grounds

1. *Planning Act*, R.S.O. 1990, c. P. 13, as amended;
2. *Ontario Land Tribunal Act, 2021*, SO 2021, c 4, Sch 6; and

3. Ontario Land Tribunal *Rules of Practice and Procedure*.
4. This response also relies upon such further and other grounds as counsel may advise and this Honourable Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

5. ClubLink's Motion Record dated December 29, 2021;
6. The Affidavit of Douglas Nuttall, P. Eng, sworn January 7, 2022 and exhibits attached thereto;
7. The Tribunal's file materials in respect of Case No. PL200195;
8. Such further evidence and documentation as counsel may advise and the Tribunal may permit.

January 7, 2022

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In accordance with [Rule 10](#), the Notice of Response to Motion and all supporting materials shall be served no later than 7 days before the day the motion is to be heard. An affidavit of service should be filed with the Tribunal, confirming same.