

ONTARIO LAND TRIBUNAL

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

Applicant and Appellant:	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
Municipality File No.:	D02-02-19-0123
OLT Case No.:	PL200195
OLT File No.:	PL200195
OLT 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 and Appellant:	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
Municipality File No.:	D07-16-19-0026
OLT Case No.:	PL200195
OLT File No.:	PL200196

**CLOSING SUBMISSIONS OF CLUBLINK CORPORATION ULC**

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## Redevelopment of the Subject Lands for Residential Use is Appropriate and Desirable

1. The proposed redevelopment of the Kanata Golf and Country Club lands represents an appropriate and desirable infill opportunity, which fulfils the policy directions in the *Provincial Policy Statement* (“PPS”) and the Official Plan (“OP”) promoting residential intensification, efficient use of land and infrastructure, and increasing housing supply.<sup>1</sup>
2. Ms. McCreight and Mr. Smith agree that the applications are consistent with the PPS from a planning perspective.<sup>2</sup>
3. The historic use of the subject lands as a golf course is not determinative of future land use.<sup>3</sup> Land use planning is not static, and the OP specifically contemplates zoning by-law amendment applications to change the use of private golf courses.<sup>4</sup>
4. This proposal is another in a series of redevelopments of open space and golf course lands.<sup>5</sup> A notable distinction is that, in this case, the subject lands do not have an open space designation (e.g. *Major Open Space*), but are designated *General Urban Area* in the OP, which “permits the development of a full range and choice of housing types to meet the needs of all ages, incomes and life circumstances”.<sup>6</sup>

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<sup>1</sup> *Provincial Policy Statement*, policies: 1.1.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.5, 1.4.1, 1.4.3, 1.6.3, 1.6.6.1, 1.6.6.2, 1.6.7.2, 1.6.7.4, 1.7.1, 1.8.1, Exhibit 8, Volume 1, Tab 6, pp. 192-194, 201-203, 205, 207-208; Official Plan, policies: 2.2, 2.2.2, 2.2.2.10, 2.2.2.22, 2.2.2.23, 2.3, 3.6.1, 3.6.1.3, 3.6.1.5, Exhibit 8, Volume 1, Tab 7, pp. 252-253, 258-263, 266, 309-310.

<sup>2</sup> Agreed Statement of Facts, Exhibit 8, Volume 5, Tab 80, p. 4728.

<sup>3</sup> *Scarborough (City) Official Plan Amendment No. 1001, Re.*, 1998 CarswellOnt 5601 (O.M.B.) at paras. 47-55, 65-66, Book of Authorities (“BOA”), Tab 1, pp. 16-18.

<sup>4</sup> Official Plan, s. 2.4.5.4, Exhibit 8, Volume 1, Tab 7, p. 289 and s. 4.10.13, Exhibit 8, Volume 1, Tab 7, p. 355.

<sup>5</sup> *1045501 Ontario Ltd., Re.*, 1999 CarswellOnt 8054 (O.M.B.), BOA, Tab 2, pp. 32, 44-45; *Marianneville Developments Ltd. v. Newmarket (Town)*, 2014 CarswellOnt 16565 (O.M.B.), BOA, Tab 3, pp. 56, 59-64; *Highland Gate Developments Inc. v. Aurora (Town)*, 2016 CarswellOnt 21222 (O.M.B.), BOA, Tab 4, pp. 94-96; *Canterbury Land Development Corporation v. Scugog (Township)*, 2017 CarswellOnt 11126 (O.M.B.), BOA, Tab 5, pp. 101-104; *Bronte Green Corporation v. Oakville (Town)*, 2017 CarswellOnt 9999 (O.M.B.), BOA, Tab 6, pp. 119-120, 122; *Saginaw Development Corporation v. Cambridge (City)*, 2018 CarswellOnt 22100 (L.P.A.T.), BOA, Tab 7, pp. 129-131, 135; *Sixteenth Land Holdings Inc. v. Markham (City)*, 2019 CarswellOnt 18169 (L.P.A.T.), BOA, Tab 8, pp. 155-156, 161; *Patterson v. Vaughan (City)*, 2021 CarswellOnt 9822 (O.L.T.), BOA, Tab 9, pp. 245-250, 253.

<sup>6</sup> Official Plan, s. 3.6.1, Exhibit 8, Volume 1, Tab 7, p. 310.

5. While the subject lands are currently privately owned, approximately 30% of the lands would be conveyed to the City of Ottawa (the “City”) for public open space under the proposal, including four new public parks.<sup>7</sup>

### **There is No Need for an OPA or a Community Planning Study**

6. Ms. McCreight and Mr. Smith agree that neither an Official Plan Amendment (“OPA”) nor a broader community planning study is required.<sup>8</sup>
7. Mr. Jacobs’ opinion that an OPA is required based on policy 4.10.5 of the OP is illogical, as this policy deals solely with parkland dedication requirements,<sup>9</sup> which the proposal exceeds.

### **The Proposed Redevelopment is Compatible with the Surrounding Community**

8. The proposed redevelopment is compatible with the existing surrounding neighbourhood.
9. “Compatibility”, in the OP, means development that is “not necessarily the same as or similar to”, but coexists with existing development without causing undue adverse impact on surrounding properties, and that “fits” and “works” well with the physical context and planned function.<sup>10</sup>
10. The surrounding community has a wide range of lot sizes (approximately 35-70 foot frontages) and a broad mix of housing types (detached, semi-detached, townhouses, apartments),<sup>11</sup> and is a stable residential area with no evidence of incompatibility.
11. Smaller lot sizes and the potential for multiple lots backing onto existing detached lots does not create “incompatibility”, and already exists in the immediate neighbourhood.<sup>12</sup>

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<sup>7</sup> Visual Evidence – Proposed Parks & Open Space, Exhibit 11, Volume 1, p. 28.

<sup>8</sup> Official Plan, s. 2.5.6.11, Exhibit 8, Volume 1, Tab 7, p. 305.

<sup>9</sup> Official Plan, s. 4.10, Exhibit 8, Volume 1, Tab 7, p. 354.

<sup>10</sup> Official Plan, s. 2.5.1, Exhibit 8, Volume 1, Tab 7, p. 292, which all planners agree is the appropriate definition to be used in assessing compatibility (Exhibit 8, Volume 5, Tab 80, p. 4728). See also the general definition of “compatible” in *Motisi v. Bernardi*, 1987 CarswellOnt 3719 (O.M.B.), BOA, Tab 10, p. 258.

<sup>11</sup> Visual Evidence – Existing Lot Typologies, Exhibit 11, Volume 1, p. 18.

<sup>12</sup> geoOttawa Maps of Surrounding Areas, Exhibit 17.

12. Further, ClubLink proposes interface treatments,<sup>13</sup> including landscaped buffers, to address potential privacy and visual concerns in rear yards.
13. Neither Ms. McCreight nor Mr. Jacobs could identify any instability or adverse impact that would be created with the introduction of detached dwellings, which would, in some cases, be on lots of different sizes and have different setbacks than the existing community.<sup>14</sup>
14. ClubLink is agreeable to the request by the City and the Kanata Greenspace Protection Coalition (“KGPC”) that the Tribunal withhold final approval of the zoning by-law amendment until the lotting of the plan of subdivision is finalized.

### **The Proposed Redevelopment Protects the Natural Environment**

15. Dr. McKinley’s uncontested expert opinion evidence is that:
- a. The proposed redevelopment would not have a significant adverse impact on the natural features and ecological functions of the subject lands; and
  - b. The three significant woodlots being retained within new public parks are significant for their social value only, and not their ecological value.
16. Mr. Jacobs’ concerns regarding biodiversity and climate change impacts from tree removals should be disregarded. They are outside his area of expertise and absent from his Planning Rationale Report for 6301-6475 Campeau Drive,<sup>15</sup> where significant tree removal is proposed.
17. Mr. Nuttall incorrectly opined that a potential water level change in the Kizell Provincially Significant Wetland (“KPSW”) adjacent to the Beaver Pond would constitute “development” under PPS policy 2.1.4 as a “change in land use”. Dr. McKinley opined that this would not be a “change

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<sup>13</sup> Urban Design Brief, Exhibit 8, Volume 3, Tab 41, pp. 2494-2505.

<sup>14</sup> As was the case in *Scarborough (City) Official Plan Amendment No. 1001, Re.*, 1998 CarswellOnt 5601 (O.M.B.) at paras. 96-97, 100-108, BOA, Tab 1, pp. 21-23.

<sup>15</sup> Exhibit 29. The existing tree cover at 6301-6475 Campeau Drive can be seen in Exhibit 11, Volume 1, p. 5.

in land use”, and regardless, the Tribunal previously determined that “development is considered for the purposes of the *Provincial Policy Statement* as something that requires approval under the *Planning Act*”.<sup>16</sup> ClubLink is not seeking any such approval in the KPSW.<sup>17</sup>

### **The KGPC Issues Regarding Environmental Site Assessments are Irrelevant**

18. The KGPC issues regarding the Environmental Site Assessments (“ESAs”) prepared by Mr. D’Arcy are irrelevant to this proceeding. The preparation of ESAs and the filing of a Record of Site Condition (“RSC”) are subject to a prescribed process under the *Environmental Protection Act*<sup>18</sup> and O. Reg. 153/04,<sup>19</sup> which involves the Ministry of Environment but not the Tribunal.

19. ClubLink is not seeking any relief from the Tribunal in relation to this regulated process, nor does the Tribunal have authority to grant such relief.

20. Mr. Quigley acknowledges that a qualified person, such as Mr. D’Arcy, will be:

responsible for establishing the adequacy of the investigation but the Ministry of the Environment, Conservation and Parks will oversee the scope of the environmental studies and remediation done on the Site through the submission of the application for a [RSC] for the Property. A RSC is required for a property to be redeveloped to a more sensitive use, as is the case in this instance.<sup>20</sup>

21. Although some levels of mercury have been found in the shallow subsurface of the subject lands, Mr. D’Arcy confirmed that this is common, and ClubLink will need to remediate the subject lands to the applicable Ministry standards before obtaining an RSC.

22. Further, through condition 91 of the proposed Draft Plan Conditions, ClubLink must complete an RSC in accordance with O. Reg. 153/04 prior to final subdivision approval.

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<sup>16</sup> *Marquis v. Kawartha Lakes (City)*, 2003 CarswellOnt 5770 (O.M.B.) at para. 56, BOA, Tab 18, p. 408.

<sup>17</sup> Further, there is no evidence that potential minor changes in the water level in the KPSW would have any adverse ecological impact (Affidavit of Dr. McKinley, paras. 7-12, Exhibit 3, Tab 5), and this would be addressed through conditions 119 and 122 of the proposed Draft Plan Conditions in any event.

<sup>18</sup> Exhibit 8, Volume 1, Tab 2, pp. 65-74 (regarding RSCs).

<sup>19</sup> Exhibit 8, Volume 1, Tab 3, pp. 90-95 (regarding ESAs), 105-113 (regarding RSCs).

<sup>20</sup> Witness Statement of Stephen Quigley, Exhibit 10, Tab 26, p. 413.

**Sufficient Technical Analysis has been Undertaken and the Requested Approvals are Not Premature**

23. ClubLink's engineering consultants have conducted extensive work to date, even before the detailed design stage that will follow draft plan approval.<sup>21</sup>

24. The proposed stormwater management ("SWM") plan before the Tribunal is essentially the same as in ClubLink's second submission, except that specific low impact development ("LID") measures are now identified.

25. Only ClubLink called witnesses in the highly technical and specific disciplines of geotechnical engineering, hydrogeology and geomorphology.

- a. Mr. Gilbert concluded that the subsurface conditions at the subject lands can support the proposed redevelopment.
- b. Mr. Zulinski completed a subsoil infiltration review used by JFSA and prepared a sump pump assessment that was accepted by the City.
- c. Dr. Villard prepared a geomorphology assessment as part of the second submission (based on unidentified LIDs at that time) that Ms. Schaeffer confirmed was acceptable to the City's peer reviewer,<sup>22</sup> and Dr. Villard noted that he had used a "conservative" erosion threshold. Although Dr. Villard's updated erosion mitigation modelling was completed without LIDs at the City's request,<sup>23</sup> the final SWM plan will limit post-development erosion potential in the stream to existing levels through on-site controls and/or instream works, as required by proposed condition 127.

26. Mr. Pichette and Mr. Sabourin addressed, in reply evidence, the concerns raised during the

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<sup>21</sup> For example, JFSA has already spent more than 2500 hours on this project, including completing stormwater modelling of on-site conditions that Mr. Nuttall believed to be "perfect".

<sup>22</sup> Affidavit of Ms. Schaeffer, para. 8, Exhibit 1A, p. 3.

<sup>23</sup> Ms. Schaeffer has since confirmed that erosion mitigation modelling can account for proposed LIDs.



hearing by Ms. Schaeffer and Mr. Nuttall regarding the proposed SWM plan. In some cases, these concerns were based on a lack of understanding or experience. For example, contrary to Ms. Schaeffer's assertions:

- a. The distance from the bottom of the proposed bioswales to the groundwater is identified in the materials already filed;<sup>24</sup>
- b. The proposed exfiltration trenches are not essentially the same as the Etobicoke Exfiltration System, which was rejected by the City;
- c. Standard catch basins are designed to have standing water, and the proposed deep sump catch basins vary only in the depth of standing water; and
- d. Very conservative assumptions had been made regarding the amount of amended soils that could be accommodated on residential properties.

27. Contrary to Mr. Nuttall's assertions:

- a. Infiltration tests conducted by JFSA had not been "run for 8-15 minutes", but for between 1 hour 13 minutes and 2 hours 37 minutes;<sup>25</sup> and
- b. Mr. Nuttall's calculations regarding flows and water levels in the Beaver Pond were based on an improper "apples and oranges" comparison: a single event model *without* the KNL 9 development, versus a continuous model *with* the KNL 9 development (*without* SWM controls) and the proposed redevelopment (*without* accounting for LIDs).

28. Finally, in response to assertions by Ms. Schaeffer and Mr. Nuttall inferring that the entire subject lands have highly impermeable soils, Mr. Sabourin confirmed he applied a very conservative infiltration rate (the lowest rate identified by Mr. Zulinski, with a factor of safety of 2.5) and

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<sup>24</sup> Functional Servicing Report of DSEL, Exhibit 8, Volume 4, Tab 50, p. 3791.

<sup>25</sup> 2018 Surface Infiltration Testing of JFSA, Exhibit 8, Volume 1, Tab 21, pp. 888-891.

demonstrated that the “model of record” identifies approximately three-quarters of the subject lands as having “Group B” soils with a “moderate infiltration rate”, far better infiltration capability than suggested by Ms. Schaeffer or Mr. Nuttall.<sup>26</sup>

29. The proposed redevelopment can be serviced with municipal water, sanitary and storm sewer systems, as proposed by Mr. Pichette. Any sanitary capacity constraint can be overcome with the City’s proposed diversion of flows to another trunk sewer – this is simply an issue of timing, and could be front-ended by the developer if necessary.

30. ClubLink has clearly demonstrated feasibility for the proposed redevelopment, and further analysis and details can and should be resolved during the detailed design stage, including any additional permits and/or approvals – as is the typical subdivision approval process.<sup>27</sup>

31. The proposed Draft Plan Conditions will ensure that any outstanding technical issues are addressed prior to final subdivision approval. For example, the suite of LIDs proposed by Mr. Pichette and Mr. Sabourin must be supported by a hydrogeological report (proposed condition 114), and ClubLink must demonstrate that the on-site water balance will be maintained with LIDs (condition 120). As Mr. Pichette noted, a similar amount of information was provided to the City regarding proposed LIDs for the Conservancy East development, and the City recently issued draft plan approval with a condition to refine LIDs at the detailed design stage.<sup>28</sup>

### **Proposed Conditions of Approval**

32. It is not uncommon to have approximately 200 conditions of approval for large residential subdivisions in Ottawa,<sup>29</sup> and ClubLink only proposes revisions to 11 of the 192 conditions

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<sup>26</sup> Stormwater Management Pond Sizing of JFSA, Exhibit 8, Volume 2, Tab 28, pp. 1290-1298; City of Ottawa Sewer Design Guidelines, Exhibit 8, Volume 6, Tab 123, p. 6190.

<sup>27</sup> *Perfetto, Re.*, 1997 CarswellOnt 8383 (O.M.B.), BOA, Tab 11, pp. 263-268, 271; *Kimvar Enterprises Inc. v. Simcoe (County)*, 2007 CarswellOnt 8320 (O.M.B.), BOA, Tab 12, pp. 286, 288; *Milton Meadows Properties Inc. v. Milton (Town)*, (2014) 82 O.M.B.R. 432 (O.M.B.), BOA, Tab 13, pp. 330, 334-336.

<sup>28</sup> See condition 130 of the Draft Plan Conditions for Conservancy East, Exhibit 20, p. 35.

<sup>29</sup> See the Draft Plan Conditions for Minto Brookline (Exhibit 18) and Conservancy East (Exhibit 20).

proposed by the City.

33. The City will be involved in the steps ClubLink takes to satisfy the Draft Plan Conditions and will need to clear the conditions before final subdivision approval.

34. The table below summarizes ClubLink's position on the disputed conditions:

Condition	ClubLink's Position
Condition 46 – warranty period for street trees	KGPC seeks a 5-year warranty period but cannot point to another example of a 5-year period; typical warranty period is 2 years
Condition 88 – conservation easement versus subdivision agreement to protect and maintain landscaped buffers	Conservation easements, an “extraordinary measure”, can only be amended with the consent of the Minister of Natural Resources <sup>30</sup> and no examples were provided of their use in the City for this purpose; use of the zoning by-law, Tree Protection By-law and Subdivision Agreement to protect and maintain the proposed landscaped buffers is adequate
Conditions 91, 92 and 94 – KGPC's proposed additional requirements for ESAs and site remediation	The proposed additional requirements are unnecessary, go beyond the typical standards, and Mr. D'Arcy does not agree that they are required; process will be overseen by the Ministry of Environment
Condition 115 – KGPC proposal to secure modelling in Subdivision Agreement	KGPC's proposed revisions are unnecessary and redundant, particularly in light of proposed conditions 2 and 188
Conditions 116, 117 and 118 – proposed requirement to update subwatershed model	Mr. Sabourin confirmed that: (a) there is no basis to include the “unaccounted-for underground storage” in the existing conditions model but exclude it from the post-development model; and (b) two additional years of monitoring is not necessary, especially given the extensive monitoring completed to date
Condition 121 – City to only	A conservative factor of safety was already applied for LID infiltration;

<sup>30</sup> *Conservation Land Act*, R.S.O. 1990, c. C.28, s. 3(4.2), Exhibit 19, p. 3.

provide partial effectiveness credit for LID measures	this would be “double counting”; there is no similar condition in the Draft Plan Conditions for the Conservancy East development <sup>31</sup>
Conditions 124 and 126 – removal of National Capital Commission (“NCC”) as sign-off authority	NCC is one of many downstream landowners and did not request sign-off authority; <sup>32</sup> KGPC proposal for other unidentified landowners to act as “clearing agencies” is entirely inappropriate, and was rejected by the City
Condition 128 – demonstrate “legal outlet” or file <i>Drainage Act</i> petition	ClubLink is proposing to convey flows to the same location as under existing conditions – through the City’s storm sewer system to the Beaver Pond, an approved City-owned and operated SWM pond; City will remain in compliance with the Environmental Compliance Approval for the Beaver Pond; no legitimate basis to say that ClubLink currently has a “legal outlet” but will not have one upon redevelopment; further, a <i>Drainage Act</i> petition is unnecessary and ClubLink is unable, on its own, to make one under s. 4 of the <i>Drainage Act</i> ; <sup>33</sup> these requirements were not imposed for the KNL 9 development nor the recently approved development at 6301-6475 Campeau Drive; any potential adverse downstream impacts are already addressed in proposed conditions 111, 122 and 127
Condition 129 – City proposing dedicated blocks for major system drainage	City-owned blocks are not needed for major system drainage from existing subdivisions, since Mr. Pichette confirmed that no surface ponding is proposed in these locations
Condition 133 – confirmation of sanitary capacity	Mr. Pichette believes there is, or may be, sanitary capacity in the existing system to accommodate all or part of the proposed redevelopment; ClubLink’s proposed revisions are not prejudicial to the City, as the condition would still require capacity to be confirmed; the City’s proposed condition rules out the possibility of using any existing capacity

<sup>31</sup> See condition 130 of the Draft Plan Conditions for Conservancy East, Exhibit 20, p. 35.

<sup>32</sup> Comments on Third Submission, Exhibit 8, Volume 4, Tab 64, p. 4401.

<sup>33</sup> *Drainage Act*, R.S.O. 1990, c. D.17, s. 4, Exhibit 21, p. 8.

Condition 186 – Tribunal having authority to change conditions prior to final approval	Section 51(56.2) of the <i>Planning Act</i> states that even where the Tribunal has given authority to the municipality to grant final approval of the plan of subdivision, the Tribunal may change the conditions of approval prior to final approval <sup>34</sup>
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### **Relief Requested by ClubLink**

35. ClubLink requests the Tribunal issue a Decision confirming the following:

- a. The Tribunal allows the appeal of the zoning by-law amendment application and approves, in principle, zoning by-law amendments for the subject lands substantially in accordance with the chart prepared by Bousfields Inc.;<sup>35</sup>
- b. The Tribunal allows the appeal of the subdivision application and approves, in principle, a draft plan of subdivision for the subject lands substantially in accordance with Exhibit 8, Volume 3, Tab 39, subject to the Draft Plan Conditions that have been agreed to by the parties<sup>36</sup> and the versions of the disputed conditions of approval requested by ClubLink, together with direction regarding disputed conditions 36 and 70;<sup>37</sup>
- c. The Tribunal withholds its Order pending receipt of a draft zoning by-law amendment in a form satisfactory to the parties, together with the draft plan of subdivision and a consolidated list of Draft Plan Conditions based on the Tribunal's Decision and directions; and
- d. The Tribunal confirms that it may be spoken to by the parties if any difficulties arise in implementing its Decision.

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<sup>34</sup> *Planning Act*, R.S.O. 1990, c. P.13, s. 51(56.2), Exhibit 8, Volume 1, Tab 1, p. 53.

<sup>35</sup> Planning Rationale Addendum Letter #2, Exhibit 8, Volume 3, Tab 40, pp. 2443-2445.

<sup>36</sup> Proposed Draft Plan Conditions - Conditions agreed upon by parties, Exhibit 35.

<sup>37</sup> Proposed Draft Plan Conditions - Conditions in dispute, Exhibit 36.