

**ONTARIO LAND TRIBUNAL
TRIBUNAL ONTARIEN DE L'AMÉNAGEMENT DU TERRITOIRE**

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

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| 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 |
| 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

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| 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 |
| LPAT Case No.: | PL200195 |
| LPAT File No.: | PL200196 |

SUBMISSION OUTLINE – CITY OF OTTAWA

INTRODUCTION

1. As stated in the opening submissions of the City, the concerns of the City largely fall into two “buckets”, those of planning and of stormwater. A third concern, that of the timing of sanitary sewer works is however also relevant.

PLANNING

2. Given the extensive soil removal that will occur for the removal of the mercury contamination and the subsequent preloading (over four metres in locations) that will occur if this development is approved, it is respectfully submitted that it is essential in this case to know that there is a viable development, from a perspective of stormwater and sanitary sewer engineering, prior to the granting of draft approval..
3. That which is sought is set forth in the zoning provisions

Exhibit 8-3, Tab 40, p. 2443

4. City does not contest the Townhouse, Back to back Townhouse, Stacked townhouse or apartment building provisions

Lotting

5. The proposal from the applicant provides for developments of several frontages, being 30 to 44 foot frontages.

Exhibit 8-3, Tab 41, pp.

6. However the proposals are presented as conceptual.

Exhibit 8-3, Tab 40, 2435, Tab 41, 2551

7. As a result there is no commitment to the lot width in the plan of subdivision. Modifications may be sought, not for reasons of compatibility, but rather for reasons of market and servicing.

Exhibit 10, Tab 1, Witness statement of Peter Smith, p. 23, para. 70, Cross-examination of Peter Smith

8. There is no provision in the draft zoning provisions limiting the density of the development to that identified by Mr. Smith (net density of 41.6 units per hectare).

Exhibit 10, Tab 1, Witness statement of Peter Smith, p. 9, para. 10; cross-examination of Peter Smith

9. Section 2.5.1 and other sections of the Official Plan set forth the provisions for conformity.

In general terms, compatible development means development that, although it is not necessarily the same as or similar to existing buildings in the vicinity, can enhance an established community through good design and innovation and coexists with existing development without causing undue adverse impact on surrounding properties. It 'fits well' within its physical context and 'works well' with the existing and planned function. **Generally speaking, the more a new development can incorporate the common characteristics of its setting in the design, the more compatible it will be. Nevertheless, a development can be designed to fit and work well in a certain existing context without being 'the same as' the existing development.**

10. It was agreed that there was anticipated to be an integration between the existing community and the proposed development, with residents of each travelling through and to the other.

Cross-examination of Peter Smith

11. It was further agreed that this which is most important to integration is what is seen from the public realm, i.e. the streets.

Cross-examination of Peter Smith

12. It is the front yards and the corner side yards that will be observed from the streets.

Cross-examination of Peter Smith

13. 4.5 metres is by far the common standard in this community for front yard and corner yard setbacks, being utilized in four of the five abutting subzones.

Exhibit 10, Tab 2, Reply witness statement of Peter Smith, p. 40, para. 6; cross-examination of Silvano Tardella, cross-examination of Peter Smith

14. It is respectfully submitted that, if the development is to be approved, the details of the zoning should be modified for the detached dwellings to require a minimum of 4.5 metres for front and corner yard setbacks.

15. Landscape buffers have been a component of the proposal since the first submission. A key change in the third submission was the increase in the width of certain of the landscape buffer from 3 m to 6 m where mature trees are currently present

Exhibit 8-3, Tab 40, p. 2435

16. The proposed zoning details do propose an exception in respect of properties with the landscape buffers prohibiting permanent accessory uses, buildings and structures within the buffer.

Exhibit 8-3, Tab 40, p. 2443

17. However, such a zoning provision does not regulate the cutting or removal of trees. Further, once a plan or plans of subdivision is registered and lots transferred to individual homeowners, most existing trees and any new planted trees, being less than 50 cm in diameter at breast height, will not be protected by the City of Ottawa Tree Protection By-law.

Cross-examination of Andrew Boyd

18. Given the importance of the landscape buffer to seek to achieve compatibility, it is respectfully submitted that additional measures are required. This has been implicitly recognized by the Applicant's Planner in suggesting a condition of draft approval to require a provision in the subdivision agreement.

Exhibit 10, Tab 1, Witness Statement of Peter Smith, p 24, para. 72

19. Given the importance of the landscape buffer, it is further respectfully submitted that the registration of a specific instrument on title to such buffer should be made a condition of draft approval, which instrument (a conservation easement) would set forth the terms of protection for and specific location of the landscape buffer.

Sanitary Sewer

20. The Kanata Lake Trunk Sanitary Sewer does not at this time have sanitary sewer capacity for this development. The capacity of the Kanata Lake Trunk Sanitary Sewer is completely utilized by the 310 m/s instantaneous flows from the Signature Ridge Pumping Station.

Exhibit 10, Tab 24, Witness Statement of Gabrielle Schaeffer, pp. 366-7, para 23c; Exhibit 8-4, Tab 64, p. 4387, comment 44

21. It is anticipated that a project for the redirection of flows will be identified in the upcoming Infrastructure Master Plan, but the inclusion of such a project, budgeting or permission for a front-ending agreement are all subject to a requirement for Council approval.

Exhibit 10, Tab 24, Witness Statement of Gabrielle Schaeffer, pp. 366-7, para 23c; Exhibit 8-4, Tab 64, p. 4387, comment 44

22. It is respectfully submitted that it would be premature to grant draft plan approval to this subdivision prior to sanitary sewer capacity being identified.

Exhibit 10, Tab 24, Witness Statement of Gabrielle Schaeffer, pp. 366-7, para 23c

Storm Water

23. The resolution of storm water issues in respect of development in the area tributary, or seeking to be tributary, to the Beaver Pond is a significant concern. In respect of KNL Developments, granted draft approval in 2006, Phase 9 is only being developed now and the resolution of storm water issues for Phases 7 and 8 has not yet taken place.

Cross-examination of Douglas Nuttall

24. Detailed reports were submitted by the Applicants consultant through the three formal submission packages but a viable storm water approach was not found.

Index, Joint Book of Documents, pp. 2-4

25. The details of the current proposal are much more limited to the summary sheets brought forward in the attachments to the Reply Witness Statements of Stephen Pichette and Jean-Francois Sabourin.

Exhibit 10, Tab 19, Reply Witness Statement of Stephen Pichette, pp. 288-292; Exhibit 10, Tab 21, Reply Witness Statement of Jean-Francois Sabourin, pp. 323-328.

26. Significant gaps in knowledge continue such that the City continues to respectfully submit that it is premature to grant draft approval.

Modelling

27. That which is referred to as the storm water model of record, the AECOM model, was developed over a period of five years from 2010 to 2015. It was a City-led process with input from several stakeholders including the National Capital Commission, the Ministry of the Environment, Conservation and Parks and the Mississippi Valley Conservation Authority.

Evidence in Chief of Gabrielle Schaeffer

28. Input was also received from developers with Mr. Sabourin providing comments on behalf of KNL Developments.

Evidence in Chief of Jean-Francois Sabourin

29. It is noted that with Phases 7 and 8 of the KNL lands not being developed yet, and Phase 9 currently under construction, this means that the AECOM model was finalized prior to the development of the KNL lands.

30. In addition to having to address the precipitation that currently falls on the Clublinks lands, the golf course lands also receive drainage from some 70 hectares of additional residential land that was developed along with the completion of the golf course.

Cross-examination of Stephen Pichette

31. It is not disputed by any party to this hearing that there is a need to update the AECOM model if the Clublinks land is to be developed. A meeting took place on January 12, 2022 to discuss the update of the model but the only resolution that was arrived at was that further meetings will be necessary.

Evidence in Chief of Jean-Francois Sabourin, evidence in chief of Gabrielle Schaeffer

32. It is respectfully submitted that as with the current AECOM model of record, the update of this model cannot be left to one party, but ought to be a similar City-led process involving the same stakeholders as the original 2010-2015 process as all continue to have an interest. As with KNL this process should be undertaken before the lands are developed.

Existing easements and pipes

33. In the Functional Servicing Report there are nine existing City storm water easements identified, in which there are changes proposed in eight of them.

Exhibit 8-4, Tab 50, p. 3641.

34. Given the position of Council with respect to this development, it cannot be assumed that the consent of the City to changes to or within these easements and pipes will be forthcoming.

35. Mr. Pichette has acknowledged that modifications to the draft plan of subdivision will be necessary if permission to modify existing easements is refused.

Exhibit 10, Tab 18, Witness Statement of Stephen Pichette, p. 270, paras 33-4

36. It is therefore respectfully submitted that draft approval of this subdivision is premature until a storm water design is determined that does not require modifications to or within existing City easements.

Low Impact Development Techniques (“LIDs”)

37. It is respectfully submitted that the information provided with respect to Low Impact Development Techniques is inadequate to warrant the granting of draft approval.

38. As noted above in paragraphs 24 and 25 of these submissions, there is significantly less detail with respect to the proposed LIDs than with respect to the other elements of the Applicant's proposal.

39. Indeed, even elements known to the Applicant's consultants, such as, in respect of amended soils, the house being at the maximum permitted size and 50 per cent of the front yard consisting of impermeable surfaces, was not provided in documentation for this hearing nor outlined in the evidence of chief of the Applicant's witnesses.

Reply cross-examination of Stephen Pichette

40. With respect to the bioswales, it was acknowledged that the figure provided to the City was uncertain as to whether such would be located on the right-of-way or parkland. Where they are proposed to be located in the entrance to a park, even if on the right-of-

way, it is still respectfully submitted that such may not be permitted as obstructing an access to a park.

Reply cross-examination of Stephen Pichette, examination in chief of Gabriele Schaeffer.

41. It was further acknowledged that the width of the bioswale would be 1.5 metres and that in circumstances where the bioswales were proposed to be on both sides of a street such would constitute three metres of the right of way.

Reply Cross-Examination of Stephen Pichette

42. It was further acknowledged that there is already difficulty in finding space for infrastructure within the rights of way.

Reply Cross-Examination of Stephen Pichette.

43. As a result, it is respectfully submitted that the amount of infiltration from biowales identified in the Reply Witness Statement of Mr. Sabourin and within Exhibit 13 cannot be relied upon to occur over the long term.

Amended Soils

44. It was acknowledged that it is open to a homeowner to alter their property to provide for a deck, porch, artificial turf or change in soils that would affect the percentage of amended soils on the site.

Cross-examination of Jean-Francois Sabourin, Reply Cross-Examination of Stephen Pichette

45. As a result, it is respectfully submitted that the amount of infiltration identified in the Reply Witness Statement of Mr. Sabourin and within Exhibit 13 cannot be relied upon to occur over the long term.

Exfiltration Trench and Impermeable Soils Generally

46. The reply witness statement of David Gilbert states the following:

Paragraph 32c (Item #iv): Mr. Nuttall states: "Dewatering the ground as part of the SWM of a site is not consistent with the TRCA/CVC LID design guideline or City policy regarding water balancing."

Response:

3. It should be noted that significant dewatering of the ground, which would result in excessive settlement of settlement sensitive structures, will not occur due to the presence of the proposed SWM system. **The presence of a silty clay deposit with low permeability and firm to very stiff consistency will significantly reduce impact of any long-term dewatering.** Also, clay seals will be installed at design intervals within service trenches to limit long-term dewatering as noted in Subsection 6.4 of Report PG4135-2 Revision 5 dated May 17, 2021 (Emphasis added)

Exhibit 10-13, Reply Witness Statement of David Gilbert, p. 218

47. The reply witness statement of Mr. Sabourin states that it utilized the lowest rate of infiltration of 5mm/hr when the studies done by his own firm identified an infiltration rate of 3 mm/hr.

Tab 21, pp. 320-1, para. 12

48. It is respectfully submitted by the City that, based upon the information known to date, the rate of infiltration should be conservatively anticipated to be as low as that identified by Mr. Sabourin and applying the factor of safety of 2.5 identified in Mr. Sabourin's reply witnesses statement.

Exhibit 10-21, Reply Witness Statement of Jean-Francois Sabourin, pp. 320-1, para. 12

49. The table's provided by the Mr. Sabourin identified an increased rate of erosion within the Kizell Creek with the development of the Clublinks land. It is acknowledged that this time was without utilization of LIDs. Given the uncertainty as to the impact of LIDSs, it is respectfully submitted that a viable storm water approach has not been shown.

Legal Outlet

50. The legal right to discharge storm water flows from a change in use from a golf course to residential development should be demonstrated prior to draft approval.

Evidence in Chief of Gabrielle Schaeffer

Rear Yard Flow

51. Run-off from existing streets will, in major events, be directed to the rear yards of new development

Cross-examination of Stephen Pichette; Reply cross-examination of Stephen Pichette; Exhibit 8-4, Tab 50, p. 3790

52. Ms. Hemmings in her evidence noted that it is not appropriate for drainage from parks to be directed to private property.

Examination in Chief of Jennifer Hemmings

53. It is inappropriate to direct street drainage through rear yards. A conveyance of land should be provided to the City for the parcels where such overland flows are to take place.

Evidence in Chief of Gabrielle Schaeffer

Relief Requested

54. The City respectfully requests that draft approval be refused and that the appeal to the zoning by-law be dismissed.

55. In the alternative, should the Tribunal determine to approve the development, the City respectfully submits that the conditions of draft approval should be in accordance with the City position set forth in Exhibit 36. The City further submits that the order with respect to the zoning be withheld pending the final determination of the lotting pattern which shall be in accordance with the third submission of the applicant.

Respectfully Submitted:

Timothy C. Marc