

**ONTARIO LAND TRIBUNAL**

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

Appellant: ClubLink Corporation ULC  
Subject: Application to amend the Zoning By-law - Refusal or neglect to make a decision  
Description: 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.  
Reference Number: D02-02-19-0123  
Property Address: 7000 Campeau Drive  
Municipality/UT: Ottawa/Ottawa  
OLT Case No.: OLT-21-001620  
Legacy Case No.: PL200195  
OLT Lead Case No.: OLT-21-001620  
Legacy Lead Case 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

Appellant: ClubLink Corporation ULC  
Subject: Proposed Plan of Subdivision - Failure of Approval Authority to make a decision  
Description: 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.  
Reference Number: D07-16-19-0026  
Property Address: 7000 Campeau Drive  
Municipality/UT: Ottawa/Ottawa  
OLT Case No.: OLT-21-001622  
Legacy Case No.: PL200196  
OLT Lead Case No.: OLT-21-001620

**NOTICE OF RESPONSE TO MOTION**

Hearing Date: In Writing

THE RESPONSE TO BE MADE by the City of Ottawa (the “City”) to the motion made by Clublinks Corporation ULC (Clublinks) for an order of the Tribunal directing the City of Ottawa (the “City”) and the Kanata Greenspace Protection Coalition (the “Coalition”) to pay Clublinks, within fourteen days of the date of the Order, on a joint and several basis, costs in the amount of \$62,665.01.

This Response is made on the following grounds:

1. The Interim Decision of the Tribunal was made on March 22, 2022.
2. The request from Clublinks to the City and the Coalition for finalization for the draft plan of subdivision, draft conditions and zoning by-law (the “planning applications”) was sent some three years and three months later on June 13, 2025.
3. Clublinks could have pursued the request for finalization of the planning applications any time after the interim order of the Tribunal.
4. In contrast to the three years and three months for Clublinks to seek finalization of the order for the planning applications from the Tribunal, the position and supporting material from the City was provided within five months of June, 2025.
5. The City, as well as Clublinks and the Coalition, were prepared to make submissions. The Tribunal determined that it was appropriate that oral submissions be made before both Members who heard the planning applications in 2022.
6. Thus in considering the totality of the three years and ten months post-interim decision until the finalization of the order, it is respectfully submitted the City did

not cause any meaningful delay in the overall process of Clublinks finalizing the order in respect of the planning applications.

7. The City did not oppose the granting of draft approval and the language of the conditions of draft approval in its submissions to the Tribunal.
8. Instead, the City focused its submissions solely with respect to the zoning by-law.
9. With respect to the zoning by-law, the professional planner providing opinion evidence on behalf of Clublinks in fact agreed to changes to the zoning by-law in response to the opinion evidence provided by the professional planning providing opinion evidence on behalf of the City in his affidavit provided in respect of finalizing the order for the planning applications.
10. The City acknowledges that the bases for an award of costs are not limited to the express matters listed in Rule 23.9. However, it is respectfully submitted, particularly given that the evidence offered by the City's planner did lead to alterations to the zoning by-law that no actions taken by the City warrant an award of costs against the City.
11. In that the City's evidence did lead to changes in the zoning by-law, it cannot be said that the City's actions were unreasonable, frivolous, vexatious or in bad faith.
12. Unlike the case of *Askander v. Richmond Hill (Town)*, where counsel for North Elgin Centre Inc. was found to have acted unreasonably in Phase 1, apologized and then was found to have acted unreasonably in Phase 2, the evidence of the City's witnesses and oral submissions of counsel with respect to the finalization of the order was focused and concise

13. Similarly, there was no conduct or mis-statements by the City of the kind referred to in *D. Crupi & Sons Limited v. Toronto (City)* that would warrant an award of costs.

14. In *Abbotts v Blue Mountains (Town)*, [2023 CanLII 56712 \(ON LT\)](#), Vice-Chair Lanthier sets forth a summary of the principles in respect of consideration whether or not to make an award of costs.

15. Paragraphs 35 and 36 of the decision state:

[35] This Panel Member has before set out a condensed summary of some of the Tribunal's guiding considerations and principles that have developed over time within its jurisprudence relevant to a Motion for Costs. They include the following:

- The case cited by the Residents Group, of *Kimvar Enterprises Inc., Re*, 2009 Carswell 666, ("Kimvar") referenced in the Appellant's submissions is often cited to distinguish the Tribunal's approach to costs from that of the Courts. Costs do not "follow the cause" and are not presumptively payable by an unsuccessful party to a "winner". An award of costs by the Tribunal is not routine, is not made lightly, and instead may be considered exceptional. The successful party should accordingly have no expectation that he, she, or it will recover costs of the proceeding.
- Awards of costs may only be considered where there has been misconduct rising to the high threshold established in Rule 23.9. In the event of a finding of such conduct, the award of costs is not assured and remains discretionary. The final wording of Rule 23.9 makes clear that the seriousness of the misconduct will be considered.
- Despite the exceptional nature of a costs award, the approach of the Tribunal nevertheless recognizes that parties must also be held accountable for their conduct if it is clearly unreasonable, frivolous, vexatious or in bad faith that it is deserving of an order compensating a party impacted by such conduct. There is no total immunity from cost claims.

- Something which is unreasonable is irrational, not in accordance with good sense, or foolish, whether intentionally or unintentionally.
- Frivolous conduct is conduct characterized as conduct demonstrating a lack of seriousness, and unacceptable conduct that is characterized as intentionally “silly” or “foolish”;
- An objective “reasonable person” test is applied leading to a conclusion that the totality of the party’s conduct was not “right” or not “fair”, such that the party should be obligated to compensate the requesting party for that kind of conduct.
- In applying an objective test of a reasonable person, the seriousness of the misconduct, and its impact upon the ability of the Tribunal to ensure a fair and efficient hearing, or its impact upon other parties such as the party requesting the costs, is to be considered.
- The approach of the Tribunal is to ensure that litigants are not dissuaded from exercising their right of appeal for fear of costs and historically has demonstrated a sensitivity to the right of appellants to bring matters before this Tribunal.
- The Tribunal’s recognition of its public interest mandate in the consideration of costs was explained with clarity in the Kimvar decision. Vice-Chair Seaborn indicated that the public interest impact of a costs award, the “chilling effect” an award of costs may have and its deterrence of public participation in planning processes, is a relevant factor to consider and made reference to the message that the former Board and this Tribunal has “consistently communicated with respect to costs”. This statement in paragraph 40 of the Kimvar decision bears repeating:

Awards of costs are rare and costs are not intended to be used as indemnification to a successful party. The Board has made cost awards in cases where the dispute is between commercial entities and in limited circumstances, between government and business. These awards are unusual, far

from routine, each turn on their specific facts. The Board....takes a cautious approach to cost awards against citizens and strives to accommodate public participation in land use planning decisions. In fact, in the very limited number of cases where awards of costs have been made against citizens, amounts have always been nominal. This is entirely consistent with how the Board has typically proceeded: costs cannot be used as a threat to deter public participation; and costs will only be awarded (whether the parties are commercial entities, ratepayers or citizens) where the conduct complained of is so improper that it cannot be ignored.

- If the Tribunal is to exercise its discretion, costs are rarely recoverable on a substantial indemnity or full indemnity basis. For the Tribunal to consider such an elevated scale of costs, the conduct of the paying party must be found to be conduct characterised as truly egregious, reprehensible, outrageous or scandalous and beyond the type of misconduct identified in Rule 23.9.

[36] This summary is selective as to some of the general principles, factors and guidance that have come from the Tribunal, and, in the Tribunal's view, are relevant to the analysis and determination of the Applicant's Motion.

16. It is respectfully submitted that there was no conduct in the proceedings respecting the finalization of the order that approach the "the high threshold established in Rule 23.9" let alone such as to warrant the "rarely recoverable on a substantial indemnity or full indemnity basis"

17. With respect to the general conduct of the file regarding the planning applications, the record shows that while from before the first pre-consultation occurred (March 19, 2019), the City had stated on March 14, 2019 that it would proceed with an application to Court, the City processed the planning applications once received notwithstanding the application to Court thus

professionally and dealing with the planning applications that were before the hearing. This continued through the finalization of the order.

18. Clublinks, as stated in the decision of the Tribunal, was aware of the City's position with respect to not being prepared to modifying easements held by the City to permit the development to proceed

19. With respect to the motion adopted by Council on January 28, 2026, found at Exhibit C to Jean-Michel Le Blanc's affidavit, it contains the following clause:

BE IT FURTHER RESOLVED that Council directs staff, subject always to applicable legislation, Ontario Land Tribunal jurisprudence, and the requirement to consider each application on its merits, to

20. The further motion, adopted by Council on February 25, 2026, found at Exhibit 10 to the Affidavit of Stream Shen, contains the following clause:

WHEREAS recent Ontario Land Tribunal decisions respecting the subject lands have confirmed that Council must not fetter its discretion and that planning approvals, refusals, and conditions must be supported by planning evidence, statutory authority, and the public interest;

21. Council has thus in both motions acknowledged that it must act in accordance with applicable legislation.

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

1. Ontario Land Tribunal Rules of Practice and Procedure, Rule 23;
2. Affidavit of Stream Shen sworn March 30, 2026;
3. The exhibits filed with the Tribunal at the hearing event on January 14, 2026;

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