

LOCAL PLANNING APPEAL 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
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 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

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on **[INSERT]** at 10:00 a.m. at Ottawa City Hall, 110 Laurier Avenue West, Ottawa, Ontario.
3. The length of the hearing will be approximately **[INSERT]** days. The length of the hearing may be shortened as issues are reordered as settlement is achieved.
4. The parties and participants identified at the case management conference are set out in **Attachment 1** (see **Attachment 2** for the meaning of these terms).
5. The Issues are set out in the Issues List attached as **Attachment 3**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in **Attachment 4** to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.

Requirements Before the Hearing

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they are intended be called. This list must be delivered on or before **[INSERT – approx. 4 months before the hearing]**. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area(s) of expertise in which the witness is intended to be qualified with the list of witnesses.
9. Expert witnesses in the same field shall have one or more meeting(s) on or before **[INSERT]** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing and provide this list to all of the parties on or before **[INSERT]**.
10. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the

required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in section 12. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in section 12.
12. On or before **[INSERT – approximately 3 months before the hearing]**, the parties shall provide copies of their witness statements and expert witness statements to the other parties.
13. On or before **[INSERT – approximately 3 months before the hearing]**, a participant shall provide copies of their written participant statement to the other parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
14. On or before **[INSERT – approximately 2 months before the hearing]**, a party shall provide to all other parties any reply witness statements, responding any written evidence received under sections 12 and 13.
15. On or before **[INSERT – approximately 1 month before the hearing]**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. (See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)
17. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal and the other parties at least 7 days before the hearing that the written evidence is not part of their record.
18. The parties shall prepare and file a hearing plan with the Tribunal on or before **[INSERT – approximately 6 weeks before the hearing]** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.

19. Documents may be delivered by personal delivery, facsimile or registered or certified mail or email, or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. The parties shall cooperate in preparing a Joint Document Book for the hearing.
21. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

So orders the Tribunal.

DRAFT

ATTACHMENT 1 – LIST OF PARTIES / PARTICIPANTS

Parties

1. **ClubLink Corporation ULC**

Mark R. Flowers
Davies Howe LLP
The Tenth Floor
425 Adelaide Street West
Toronto, Ontario
M5V 3C1
Email: markf@davieshowe.com
Tel: 416-263-4513

2. **City of Ottawa**

Timothy C. Marc, Senior Legal Counsel
Office of the City Clerk and Solicitor
City of Ottawa
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1
Email: Timothy.Marc@ottawa.ca
Tel: 613-580-2424 Ext. 21444

3. **Kanata Greenspace Protection Coalition**

Sylvain Rouleau
WeirFoulds LLP
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario
M5K 1B7
Email: srouleau@weirfoulds.com
Tel: 416-947-5016

Participants

1. Paul Fehrenbach and Mary Fehrenbach (Email: fehrmp@sympatico.ca)
2. Desmond Taljaard and Monica Taljaard (Email: taljaard55@hotmail.com)

ATTACHMENT 2 – MEANING OF TERMS USED IN THE PROCEDURAL ORDER

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Subsection 33(2) of the *Local Planning Appeal Tribunal Act* states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant wishes to address and the submission of the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.

Additional Information:

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties (see Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.

ATTACHMENT 3 – ISSUES LIST

City of Ottawa

General

1. Should the proposed subdivision be given draft approval and/or the zoning approved pending a final determination in *City of Ottawa v. Clublink Corporation ULC* (Court File No. 19-81809)?

Subdivision

2. Is the proposed plan of subdivision consistent with the Provincial Policy Statement? [ClubLink requests greater specificity]
3. Does the proposed plan of subdivision have regard for matters of provincial interest pursuant to the *Planning Act*, section 2? [ClubLink requests greater specificity]
4. Does the proposed plan of subdivision conform to the Official Plan of the City of Ottawa and is it compatible with adjacent plans of subdivision (s.51(24)(c))? [ClubLink requests greater specificity in relation to conformity with the Official Plan]
5. Is the subdivision premature (s.51(24)(b))?
6. Is the lotting pattern appropriate (s.51(24)(f))?
7. Are the lots compatible with the surrounding community / adjacent plans of subdivision (s.51(24)(c))?
8. Is the proposed right-of-way width of 16.5 metres appropriate (s.51(24)(e))?
9. Are conditions of draft approval necessary to ensure the long term viability of the landscape buffers?
10. Are the grading and drainage, and tree preservation plans consistent with one another? Will they provide effective protection for the trees in the landscape buffer and will they maintain positive drainage routes?
11. Is the proposed amount of open space and mid-block connections appropriate?
12. Does the plan of subdivision have a legal outlet for stormwater from the proposed development (s.51(24)(h) and (i))?
13. Is any modification to the draft plan of subdivision necessary if permission to modify existing easements is refused?

14. Is it appropriate to grant draft approval before the means by which stormwater for both the proposed plan of subdivision in this matter and that for KNL Phases 7 and 8 (City File D07-16-03-0025) have been determined?
15. Has the major overland flow from the proposed draft plan of subdivision lands, and connecting existing residential lands, into the Beaver Pond been accounted for?
16. Are draft conditions of approval necessary to address repair or replacement of existing stormwater infrastructure?
17. Does the technique for low impact development means of dealing with stormwater need to be determined prior to draft approval?
18. Is the proposed use and number of oil and grit separators appropriate?
19. What is the appropriate number and location of stormwater ponds and should they be for both quality and quantity control?
20. Are sump pumps proposed as briefly mentioned in the JFSA report? If so, sump pump related draft plan conditions are to be included.
21. Is a monitored surcharging/preloading program anticipated and timelines accounted for in order to achieve the grade raise exceedances?

Zoning

22. Are the proposed three metre front and corner yard setbacks and the proposed six metre rear yard setbacks appropriate and compatible with the surrounding community?
23. Is the proposed zoning consistent with the Provincial Policy Statement? [ClubLink requests greater specificity]
24. Does the proposed zoning have regard for matters of provincial interest pursuant to the *Planning Act*, section 2? [ClubLink requests greater specificity]
25. Does the proposed zoning conform to the Official Plan of the City of Ottawa? [ClubLink requests greater specificity]
26. Are provisions in the zoning by-law sufficient to ensure the long term viability of the landscape buffers?

Kanata Greenspace Protection Coalition

[INSERT]

ClubLink Corporation ULC

- X. If a zoning by-law amendment is to be approved, what is the appropriate form and content of the amendment?
- X. If a draft plan of subdivision is to be approved, what are the appropriate conditions of approval?

Note: The identification of an issue on this list does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the hearing.

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ATTACHMENT 4 – ORDER OF EVIDENCE

1. ClubLink Corporation ULC
2. City of Ottawa
3. Kanata Greenspace Protection Coalition
4. Reply by ClubLink Corporation ULC

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