

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 22, 2024

CASE NO(S): OLT-22-002146
(Formerly PL100931)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Joan Da Silva
Subject:	Proposed Official Plan Amendment
Description:	To amend the Official Plan to regulate the use of land throughout the Town of Halton Hills
Reference Number:	OPA 7
Property Address:	Georgetown GO Station Area Secondary Plan
Municipality/UT:	Halton Hills/Halton
OLT Case No.:	OLT-21-001805
OLT Lead Case No.:	OLT-22-002146

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Joan Da Silva
Subject:	By-law No. 2010-0050
Description:	To amend the Zoning By-law to regulate the use of land throughout the Town of Halton Hills
Reference Number:	ZBL 2010-0050
Property Address:	Town Wide
Municipality/UT:	Halton Hills/Halton
OLT Case No.:	OLT-22-002146
Legacy Case No.:	PL100931
OLT Lead Case No.:	OLT-22-002146
Legacy Lead Case No.:	PL100931
OLT Case Name:	Da Silva v. Halton Hills (Town)

Heard: December 11, 12 and 13, 2023 by video hearing

APPEARANCES:**Parties****Counsel**

Joao Da Silva (“Appellant”)

T. Arnold

Town of Halton Hills (“Town”)

A. Burton

Regional Municipality of Halton
 (“Region”)

B. Maione

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)**Introduction**

[1] The Appellant lodged appeals under the *Planning Act* (“Act”) to two documents passed by the Town, applicable to the community of Georgetown, with the appeals focussing on the Appellant’s lands at 60 John Street (“site”):

- Zoning By-law 2010-0050 (“ZBL”), being the Town’s comprehensive ZBL passed in 2010 to which this case is the last remaining appeal; and
- Official Plan Amendment 7 (“OPA 7”), being a Secondary Plan (“SP”) for the Georgetown GO Station Area, approved by the Region in 2011 except as it applies to this site, given the prior ZBL appeal, but further approved by the Region in 2021 to apply to this site, resulting in the appeal herein to OPA 7.

[2] The Appellant seeks to utilize the site for an apartment building by retaining the zoning that applied to the site before the new ZBL was passed. The Appellant requests a corresponding recognition in the SP with a designation of Medium Density Residential/Office Area and a special policy allowing (deletions were agreed to during

the hearing) “a residential apartment ~~of not more than 6 storeys~~, with a maximum height of 20 metres, ~~and a maximum of 60 dwelling units~~ ...” The Appellant does not otherwise oppose the contents of the SP.

[3] As a statutory Party for the appeal to OPA 7, the Region attended the hearing in full but advised it would not participate unless requested by the Tribunal. The Tribunal had no questions for the Region throughout the hearing.

[4] The Tribunal qualified both of the experienced, professional planners retained by the Parties to provide opinion evidence in land use planning: Robert Russell for the Appellant; and Elizabeth Howson for the Town.

[5] This Decision sides with the Town given its comprehensive review and designation of intensification areas for high density residential development. The Tribunal recognizes, however, that this site carries some, albeit ill-defined, potential for intensification. Its size and shape, particularly if combined with other abutting parcels owned by the Appellant, may enable some form of intensification and better access to the transit station. However, the use, design, and resulting compatibility of this site have not been established sufficiently to warrant the requests on appeal.

Jurisdiction

[6] Of interest in this case, is that the “new” 2010 ZBL replaced the Town’s original Zoning By-law from the early days of zoning some half a century earlier, being Zoning By-law 57-91 (“old ZBL”) passed in 1957.

[7] On appeal to a ZBL, the Tribunal may dismiss the appeal, amend the ZBL, or repeal part of the ZBL (s. 34(26) of the Act). The Appellant asks the Tribunal to amend the new ZBL to carry forward the relevant permissions from the old ZBL.

[8] To the SP appeal related to this site only, the Tribunal may: dismiss the appeal; modify, and approve as modified, the SP; or refuse to approve the SP (s. 17(50) of the Act). The Appellant asks the Tribunal to modify and approve the SP to permit a residential apartment on this site.

[9] The Act requires both a ZBL and a SP, and changes thereto, to:

- have regard to matters of provincial interest (s. 2);
- be consistent with the Provincial Policy Statement, 2020 (“PPS”) [s. 3(5)(a)];
- conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (“GP”) [s. 3(5)(b)]; and
- conform with the Region Official Plan (“ROP”) and the Town of Halton Hills Official Plan (“TOP”) [s. 24(1)]; and
- the Tribunal must have regard to the related decisions of Town and Region Councils and to the information they considered when making decisions [s. 2.1(1)].

[10] A few days before this hearing was held, the Provincial Legislature enacted Bill 150, *Planning Statute Law Amendment Act, 2023*, with effects on certain planning documents, including within Halton Region. The Parties advised that Bill 150 does not affect the policies at issue in this case and that the Tribunal may rely on the evidence record as presented.

Contextual Facts

[11] The Tribunal finds that the following facts are undisputed in evidence. For compass references, John Street (“John”) is considered to run east-west.

[12] This “reverse L-shaped” site of 0.38 hectares (“ha”) fronts onto John and contains one detached dwelling. The site area is approximately four times the size of the typical residential lots nearby.

[13] If an apartment building were constructed in compliance with the old ZBL, the site could accommodate approximately 40 dwelling units (reduced from the requested 60 dwelling units as agreed by Mr. Russell).

[14] This section of John is a hill which rises to the west. The site is at the lower elevation along John, and the site’s topography itself rises substantially to the south and/or southwest (rear of the site).

[15] The site is located within the North Precinct of the SP, being to the north of the railway lines and within a Major Transit Station Area (“MTSA”) and a Strategic Growth Area in the ROP. John marks the north limit of the North Precinct.

[16] Within the North Precinct, the site abuts a variety of land use designations:

- Low Density Residential Area (“Low Density”) to the west and south;
- Park to the east, and further east another Low Density area; and
- Medium Density Residential/Office Area (“Medium Density”) to the west of the rear “L” portion of the site.

[17] In addition to this site, the Appellant owns two abutting parcels to the west: a Low Density lot fronting John; and a Medium Density parcel west of the rear “L” portion of the site. The Appellant acquired the abutting lands in +/- 2011, around the time of the Town’s passing of the ZBL and SP.

[18] The SP identifies three large areas as Redevelopment Site(s):

- to the north of the GO Station, referred to as “Rosetta” and designated as High Density Residential/Mixed Use Area 2 (“High Density”);
- to the northeast of the GO Station, referred to as “Mountainview” and designated as High Density Residential/Mixed Use Area 1 (also “High Density”);
- to the west of the GO Station within the South Precinct, referred to as “Mill” and designated as High Density Residential/Community Facility Area (also “High Density”).

[19] The old ZBL zones this site as Fourth Density Residential Zone (“R4”), permitting a variety of dwelling types including “apartment houses.” The new ZBL under appeal zones this site as Low Density Residential One (LDR1-2), limiting permitted uses to a detached dwelling.

Policy Framework

[20] The Tribunal considers the following excerpts to be representative of the various documents’ requirements that the planners generally agree are applicable here. The Tribunal has added the emphasis below to highlight key concepts.

[21] The PPS requires that:

1.1.3.2 Land use patterns within *settlement areas* shall be based on densities and a mix of land uses which:

- a) efficiently use land and resources;
- b) are appropriate for, and efficiently use, the infrastructure and *public service facilities* which are planned or available ...;

- e) support active transportation;
- f) are transit-supportive ...;

1.1.3.3 Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment ...

[22] Similarly, the GP requires that:

2.2.1.2.c) within *settlement areas*, growth will be focused in:

- i. delineated built-up areas;
- ii. strategic growth areas;
- iii. locations with existing or planned transit, with a priority on higher order transit where it exists or is planned;

[23] Within the ROP s. 81, the objectives for MTSAs include:

(2) To provide a range and mix of transit-supportive uses, such as residential, retail ... that support the area in a pedestrian-oriented urban environment. ...

(7) To maximize the number of potential transit users within walking distance of a station, while considering contextually appropriate intensification opportunities within stable residential neighbourhoods to ensure the protection of neighbourhood character, to be determined through the preparation of *Area-Specific Plans*.

[24] The Strategic Objectives of the TOP include:

A2.3.2 c) To ensure that the character and stability of existing and well established residential neighbourhoods is maintained and enhanced by ensuring that development and redevelopment is compatible, in terms of built form, with the character of adjacent buildings and

neighbourhoods and the scale and density of existing development; ...

- h) To ensure that neighbourhoods are compact and pedestrian-friendly with a mix of housing types ...

[25] The TOP sets out a Housing Mix target that includes 15% of new housing as high density (s. D1.4.8) and that:

New development that assists in achieving this housing mix shall be encouraged. ...

[26] The SP, on which this case focusses, includes the following applicable policies:

H3.1 VISION STATEMENT

The GO Station/Mill Street Corridor Area will provide opportunities for redevelopment and intensification at strategic locations ... This redevelopment and intensification will have a positive impact on the quality of life in Halton Hills, including support for the Town's economic and housing objectives, while still ensuring that the character of these existing, well established residential areas are maintained and enhanced ...

H3.2 GOALS

- a) To maintain and enhance existing residential areas, with intensification focused primarily on strategic redevelopment sites.

H3.3.6 URBAN DESIGN

c) Redevelopment Sites

Significant redevelopment shall only be permitted on certain strategic sites, as identified on Schedule H3 ... careful attention shall be given to:

- i) the relationship between the proposed new development and existing, adjacent Low Density ...
- ii) the relationship ... taking into account the topography of the area; ...

f) Low Density Residential Areas

No significant changes are planned for the majority of the Secondary Plan area. As stable residential areas, any proposed changes will be reviewed to ensure the character of the surrounding area and the streetscape is maintained and/or enhanced in accordance with the policies of this Plan.

H3.5 GO NORTH PRECINCT OBJECTIVES AND POLICIES

H3.5.1 OBJECTIVES

- b) To recognize the potential for the development of the lots fronting on the proposed intensification sites for medium density residential and/or office uses to complement the adjacent high density residential development.
- c) To recognize the remaining portions of the North Precinct as a stable residential area where only modest changes in keeping with the existing character of the area will be permitted.

Issues and Findings

[27] The Tribunal has considered all evidence and submissions, and will focus on the primary issues addressed by the Parties. The Tribunal groups the issues into three questions:

Is additional intensification needed in the SP?

Is the requested land use compatible with the neighbourhood?

Is the alleged downzoning warranted?

Need

[28] The Tribunal finds that no pressing need exists to include this site for intensification within the original SP.

[29] Mr. Russell provides reasoned opinions on why this site is needed for intensification, referring largely to the many benefits of development in proximity to higher order transit. However, the Tribunal prefers the evidence of Ms. Howson who acknowledges the potential benefits identified by Mr. Russell but goes on to assess what the Tribunal considers a “higher view” of the issue. This MTSA has been and

continues to be planned through comprehensive analyses through the creation, and now potential updating, of the SP.

[30] The Tribunal accepts Ms. Howson's evidence that this site, along with all other potential sites within the MTSA, would have been evaluated for their intensification potential when the SP was drafted. This site was not selected for intensification. Although no evidence was proffered by the Town to confirm the pre-2011 review of this specific site for intensification, the Tribunal finds that it could not have been overlooked in review due to its visible size and proximity to transit, evident even on the small-scale SP Schedule E. Some eight years later, the 2019 Hemson Report, conducted for the consideration of potential updates to the SP, considers this site for intensification and rates it as having a medium likelihood for development, and a longer-term timing of development, being beyond 2032. These observations, while recognizing that they have not been endorsed yet through a SP update, nevertheless lend support for this site not having been designated for intensification back in 2011.

[31] The Tribunal accepts Mr. Russell's evidence that the sum potential of designated sites for growth may exceed the anticipated growth needs. For example, the ROP seeks to "maximize the number of potential transit users" [s. 81(7)] and the TOP encourages a mix of housing (s. D1.4.8). Infill apartments, such as depicted on the Appellant's concept plan, bring numerous planning merits including the efficient use of infrastructure, walking to and support of transit, and stemming the outward expansion of urban areas.

[32] However, in addition to the compatibility considerations addressed below, the Tribunal finds that this site is not "needed" for the 2011 SP to potentially achieve its goals, given: the three substantial, designated, intensification areas; certain developments underway or in the Town's approvals process; and a potential update to the SP now underway as evidenced by the Hemson Report. The SP selects "strategic locations" for intensification (s. H3.1) and the Tribunal finds in favour of Ms. Howson's

opinion that this site was and is not needed in this SP when compared to the Rosetta, Mountainview and Mill intensification areas based on their size and locations.

[33] A curious element of this case is that, while the Tribunal is asked to adjudicate on decisions effectively made in 2010 (ZBL) and 2011 (OPA 7), it has the benefit of hindsight. Best efforts were made to identify the growth areas, but one could not predict with any certainty whether developments would ensue. The Tribunal accepts conceptually, Mr. Russell's opinion that this site would increase the potential for transit-supportive intensification; yet despite those intervening years, the Appellant has not advanced a development proposal. Thus, the Tribunal has difficulty accepting the opinion of Mr. Russell that, because intensification is proceeding slowly or not at all within the intensification areas, then this site should be so designated. The Appellant himself has not advanced plans for this site either. The Tribunal finds Mr. Russell's position to be relevant for the forthcoming review and/or update of the SP, but not for justifying this appeal. Both at the time of this hearing and back in 2010-11, the Tribunal finds that need has been insufficiently demonstrated to justify the appeals.

[34] The Tribunal agrees with the Appellant's submission that this site "can help achieve the goal of intensification" but finds that need is not to be evaluated in isolation. The Tribunal accepts that the Town's goals for increased density will be achieved through the identified areas, along with the permitted "gentle intensification" in the lower density areas. This site is not needed at this time, and its issues of compatibility, as discussed below, warrant further review.

[35] The Tribunal does not wish nor intend to remove the potential consideration of the approval authorities for this site (and its adjoining owned lands) to help meet the housing needs that may be identified through a SP update. Indeed, as noted below, it is plausible that the Appellant may wish to pursue a more fulsome proposal, which may or may not include the adjoining lands, based on a detailed plan and supporting studies for a requested development.

Compatibility

[36] The Tribunal finds that in the absence of a complete proposal, it cannot conclude that the requested SP designation and R4 zoning will result in development that is compatible with the immediate neighbourhood.

[37] The Tribunal accepts the Appellant's assertion, corroborated by the opinion evidence, that being 'compatible with' does not mean the 'same as' or 'similar to.' "Being compatible with means being mutually tolerant and capable of coexisting together in harmony in the same area" (*Kewatin (Town) Zoning By-law No. 94-013 (Re)*, para. 21). However, for 60 John Street, the Appellant carries the onus to demonstrate that the requested permissions satisfy the current PPS and GP in all respects. While intensification is acknowledged as desired within this MTSA, the other primary issue of compatibility has not been addressed sufficiently given the absence of a specific proposed development.

[38] Mr. Russell opines that issues of compatibility can be addressed fully through the necessary site plan application, such that matters of setbacks, density, parking, etc. need not be resolved through the ZBL. He opines that the concept plan, while only an example of possible development, demonstrates that a suitable design can be achieved that respects the site and surrounding area.

[39] Aligning with Ms. Howson's opinion, the Tribunal finds that zoning can and should address matters of compatibility to ensure that resulting developments appropriately fit with the neighbourhood character. Such consideration should not be deferred only to a site plan application. Here is an example of this 1957 ZBL being out of date with planning processes today as exemplified by the SP. The Tribunal finds that not considering compatibility at the SP and ZBL stage would fail to satisfy the legislative and policy directives cited earlier.

[40] The Appellant argues that much of the SP's intensification areas did not, and still do not, have development proposals, such that this site should be treated similarly. While the zoning of those lands was not provided in evidence, Ms. Howson advised that site-specific ZBL amendments were required for specific development proposals, some of which are in the pre-submission or application stage of review (Ex. 1, p. 214).

[41] The undisputed evidence is that this section of John Street is flanked on both sides by detached dwellings. Since the passing of the ZBL in 1957, only detached dwellings have remained or been built in this area, despite this site and other properties being zoned R4 allowing a variety of residential building types. This proposal would introduce an exception to this long-established John Street neighbourhood.

[42] Compatibility is a fundamental land use goal. The PPS requires the identification of "appropriate locations" for transit-oriented development (s. 1.1.3.3); the ROP directs "contextually appropriate intensification opportunities" [s. 81(7)]; the TOP calls for the character of neighbourhoods to be "maintained and enhanced" [s. A2.3.2 c)]. Moreover, the SP itself requires that "careful attention" be given to the relationship between new developments and adjacent low density uses [s. H3.3.6 c) i)] and that the "character of the surrounding area and the streetscape is maintained and/or enhanced" [s. H3.3.6 f)].

[43] The Tribunal accepts the position of Ms. Howson that the repeated use of "appropriate" in the PPS and GP necessitates a balancing of concepts, such that "efficiency" and "intensification" do not take priority but are weighed against contextual settings. For this site, intensification opportunities may be possible, but the unit types, height and density require a careful review with the character of the surrounding neighbourhood.

[44] From the GO Station northward, the progression of land use designations scale down from High Density to Medium Density to Low Density. This site, exemplified by the concept plan, would interrupt this transition of housing form, and thus, warrants careful review. Moreover, the density of housing on this site enabled by the old ZBL

provision could substantially exceed the 35 units/ha permitted by the SP within the adjacent Medium Density designation (which includes some of the lands acquired by the Appellant). The Tribunal finds that pre-zoning this site for an apartment building would fail to sufficiently assess compatibility with the adjacent Mature Neighbourhood along John (Ex. 1, p. 79).

[45] Guiding the Tribunal's findings is its observation that a ZBL from 1957 is dated. Times have changed and ZBLs need to be brought into the present. One example, is the old ZBL's permitted density, opined to be 158 units/ha, far exceeds what is anticipated by the current SP, even within the designated Redevelopment Site(s). Another example is the reasonable gradation of permitted development within the North Precinct, generally being High Density along the railway, then Medium Density behind, leading to Low Density and Park further out. While this site abuts Medium Density to its west, it fronts John which is flanked completely by Low Density and the Park, and this site abuts Low Density both to its side and rear.

[46] These observations lead the Tribunal to find that further review is required, which, to the potential benefit of the Appellant, the Town is undertaking in its review of the SP. The Appellant may wish to be involved in such review, along with more definitive plans for the site, including whether or not the abutting owned lots will be encompassed within a development proposal for this site.

Downzoning

[47] The Appellant argues that the site is being unfairly subjected to downzoning – the concept where development rights are being removed. The Appellant submits that the Town has not met its burden to demonstrate that the public good outweighs the loss that will accrue to the Appellant. No studies were conducted by the Town to assess the public benefits against the private harm.

[48] The Town argues that downzoning is not a legal issue for debate, but if it is considered, that the Appellant has not demonstrated that any loss or harm was incurred from the ZBL as passed.

[49] First, the Tribunal agrees with para. 70 in the recent Tribunal Decision for *Centreville Homes (Pickering) Inc. / Saccoccio v. Pickering (City)*, (“Centreville”):

The Tribunal notes that s. 2(n) of the Act requires the Tribunal, in carrying out its responsibilities under the Act, to have regard to the resolution of planning conflicts involving public and private interests. Clearly, private interests are not an absolute in planning matters.

[50] Second, para. 66 in the Centreville Decision bears similarity to this case where the Member found that:

... the issue of infill and replacement dwellings in the Precincts were considered over many years, was supported by studies by City staff and outside consultants and was the subject-matter of robust public consultation.

[51] Each counsel points to the other to bear the burden of proof for downzoning. The Tribunal finds that it is reasonable to accept that reducing the permitted intensity of development on a site may reduce its value, resulting in a cost or burden to the owner. Similarly, however, it is reasonable to accept that a municipality’s thorough planning exercise that results in land use changes is a function and expression of the public interest and public benefit.

[52] The Tribunal finds here that planning policies and regulations likely always result in positive and negative effects to owners, neighbours, developers, and the municipality itself; but good planning reflects the public interest in its pursuit of articulated goals and objectives. The Georgetown SP envisions:

“opportunities for redevelopment and intensification at strategic locations ... while still ensuring that the character of these existing, well-established residential areas are maintained and enhanced ...” (Ex. 5.1, p. 2).

[53] The Tribunal finds that any potential negative effect of the Town's ZBL on this site is warranted by the public benefit of a comprehensive approach to addressing intensification and facilitating transit use while endeavouring to protect existing neighbourhoods. Again, the Tribunal is not pre-empting the Town's future consideration of the role of this site relative to stated planning goals, and, as noted, the Appellant may want to consider potentially viable development options on its entire holdings, pursued in the form of a ZBL amendment application. Of note is the Participant statement (Ex. 3) that the local community suggests consideration of townhomes.

[54] Having considered the several cases argued by the Parties, the Tribunal disagrees with the Appellant's contention that downzoning should weigh into this Decision. The Tribunal considers the SP and ZBL, as they apply to this site, to be warranted in the public interest.

Conclusion

[55] The Tribunal denies the appeals based on the interplay of need and compatibility. On need, this site (and adjoining owned lands) displays potential to help address housing demands, and yet no development proposal has been advanced by the Appellant over the past decade. In the absence of detailed plans, compatibility cannot be assessed sufficiently.

[56] The Tribunal finds that the requested SP designation and policy and the requested ZBL provisions of these appeals:

- do not have sufficient regard to matters of provincial interest;
- are not consistent with the PPS;

- do not conform with the GP; and
- do not conform with the ROP and TOP.

[57] The Tribunal has had regard to the related decisions of the Town and Region Councils and to the information they considered when making decisions. The Tribunal has also considered the Participant Statement of Bridgeen Wey filed on behalf of area residents.

Order

[58] **THE TRIBUNAL ORDERS** that:

- the appeals are denied;
- Zoning By-law 2010-0050 is in full force and effect as it applies to 60 John Street, Georgetown, pursuant to s. 34(30) of the *Planning Act*; and
- Official Plan Amendment 7 is approved as it applies to 60 John Street, Georgetown, pursuant to s. 17(50) of the *Planning Act*.

“S. Tousaw”

S. TOUSAW
VICE-CHAIR

Ontario Land Tribunal

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