

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 10, 2018

CASE NO.:

PL180077

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Prespa Construction Limited
Subject:	Application to amend Zoning By-law No. (1507) - Neglect of Municipality of Central Elgin to make a decision
Existing Zoning:	Residential Zone (R1), Business Zone 1 (B1) and Open Space Zone 3 (OS3)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a mixed use development consisting of 52 residential units in a 9 storey apartment building
Property Address/Description:	146-156 William Street
Municipality:	Municipality of Central Elgin
Municipality File No.:	PS2-02-15
OMB Case No.:	PL180077
OMB File No.:	PL180077
OMB Case Name:	Prespa Construction Limited v. Central Elgin (Municipality)

Heard: August 22, 2018 in Port Stanley, Ontario

APPEARANCES:

Parties

Prespa Construction Limited

Municipality of Central Elgin

Counsel

Alan R. Patton

Stephen H. Gibson

**MEMORANDUM OF ORAL DECISION DELIVERED BY MARCIA VALIANTE ON
AUGUST 22, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] In October 2015, Prespa Construction Limited (“Applicant”) applied to the Municipality of Central Elgin (“Municipality”) seeking an amendment to its Zoning By-law to permit development of lands located at 146-156 William Street in the Village of Port Stanley (“subject property”). The Applicant proposed to construct a nine-storey mixed-use building with ground floor retail and 52 apartments above, on one portion of the subject property, and three detached vacant land condominium dwellings on another portion. The application was deemed complete in January 2016.

[2] A statutory public meeting was held with respect to the application on March 1, 2016. In January 2018, the Applicant appealed the Municipality’s failure to make a decision on the application within the statutory period to the Ontario Municipal Board, now the Local Planning Appeal Tribunal (“Tribunal”), pursuant to s. 34(11) of the *Planning Act*.

[3] The Tribunal held a Pre-hearing Conference (“PHC”) on August 22, 2018 in the Municipality. At that time, the Tribunal granted Participant status to a number of persons. All those granted Participant status stated that they have an interest in the outcome of the proceeding as residents in the vicinity of the proposed development and that they intend to provide evidence that will assist the Tribunal in its understanding of the issues in the hearing. The Parties did not oppose the granting of status to these persons. The Tribunal encouraged the Participants to coordinate their evidence to the extent possible and appropriate, in order to avoid significant duplication of evidence at the hearing. The date for the service and filing of Participants’ statements is set out in the Procedural Order, Attachment 1 to this Order. The schedule for the hearing of the Participants’ oral evidence will be determined at the outset of the hearing by the Tribunal Member conducting the hearing.

[4] Also at the PHC, Alan Patton, counsel to the Applicant, informed the Tribunal that

the Applicant intends to submit drawings, plans and studies for a revised development proposal for the subject property, comprising two five-storey buildings, to the Municipality. Mr. Patton stated that the Applicant will request the Tribunal at the hearing to approve a zoning by-law amendment to permit the revised proposal to be constructed. Stephen Gibson, counsel to the Municipality, stated that the Municipality requires that all materials in support of a revised proposal be received and that sufficient time be provided prior to the hearing for staff to review the materials and for a public information session to be held. Following discussion with the Parties as to timing, the Tribunal agreed with Mr. Gibson's request and directed the Applicant to provide all drawings, plans, studies and reports in support of a revised proposal to the Municipality by November 15, 2018. Further details regarding these submissions and the holding of a public information session are set out in the attached Procedural Order.

[5] The Parties agreed that the hearing will commence on March 11, 2019 and last approximately five days. The Issues List and the dates for service and filing of witness lists, witness statements, Participants' statements and visual evidence are set out in the attached Procedural Order.

ORDER

[6] The Tribunal orders:

- a. Participant status is granted to the following:
 - i. Linda Easton, Dan Ross and Ted Halwa, on behalf of the unincorporated Port Stanley Village Association;
 - ii. Janet Kennedy;
 - iii. Carol Parafenko;
 - iv. Della Wilson;
 - v. Candy Hayward;
 - vi. Elgin Condominium Corporation No. 4;

- vii. Doris and Dennis Gingell;
 - viii. Beth Ann Connors; and
 - ix. Steven Roorda.
- b. The hearing shall commence at **10:30 a.m. on Monday, March 11, 2019**
at:

**Port Stanley Arena
Upper Hall (1st Floor)
332 Carlow Road
Central Elgin, ON N5L 1B6**

- c. The hearing shall be conducted in accordance with the Procedural Order,
Attachment 1 to this Order.

[7] This member is not seized.

"Marcia Valiante"

MARCIA VALIANTE
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

PL180077

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

Applicant and Appellant: Prespa Construction Limited
Subject: Application to amend Zoning By-Law No. (1507) – Neglect of Municipality of Central Elgin to make a decision
Existing Zoning: Residential Zone (R1), Business Zone 1 (B1) and Open Space Zone 3 (OS3)
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit a mixed use development consisting of 52 residential units in a 9 storey apartment building
Property Address / Description: 146-156 William Street
Municipality: Municipality of Central Elgin
Municipality File No.: PS2-02-15
OMB Case No.: PL180077
OMB File No.: PL180077
OMB Case Name: Prespa Construction Limited v. Central Elgin (Municipality)

PROCEDURAL ORDER

CASE NO.: PL180077

1. The Tribunal may vary or add to these directions at any time, 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 March 11, 2019 at 10:30 a.m. at Port Stanley Arena, Upper Hall (1st Floor), 332 Carlow Road, Central Elgin ON N5L 1B6.
3. The length of the hearing will be about 5 days.
4. The parties and participants identified at the prehearing conference are:

A – Parties:

- (i) Prespa Construction Limited
- (ii) Municipality of Central Elgin

B – Participants:

- (i) Linda Easton, Dan Ross and Ted Halwa on behalf of the Port Stanley Village Association

- (ii) Janet Kennedy
- (iii) Carol Parafenko
- (iv) Della Wilson
- (v) Candy Hayward
- (vi) Elgin Condominium Corporation No. 4
- (vii) Doris Gingell / Dennis Gingell
- (viii) Beth Ann Connors
- (ix) Steven Roorda

5. The issues to be determined are:

See Schedule "A"

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. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, and phone number as soon as possible.

Requirements Before the Hearing

7. The Tribunal acknowledges that the Applicant/Appellant Prespa Construction Limited, during the prehearing conference conducted on August 22, 2018, advised of an intention to modify its development proposal from one (1) – nine (9) storey building and three (3) detached dwelling structures to two (2) – five (5) storey buildings. In the event that the said Applicant/Appellant proposes to proceed with such modification and to call evidence, including but not limited to expert planning evidence, in support of such modified development proposal, then,
- (i) on or before November 15, 2018, the said Applicant/Appellant shall deliver to the Municipality of Central Elgin details and specifications and any additional studies, submissions and other materials to be relied upon in support of such modified development proposal at the hearing herein; and,
 - (ii) on or before January 18, 2019, the Applicant/Appellant shall arrange for and hold a Public Information Session at an appropriate facility within the Community of Port Stanley in the Municipality of Central Elgin at which the details and specifications and planning justification for such modified proposal shall be disclosed to the public; provided that written notice of such Public Information Session shall be delivered by the Applicant/Appellant to the Municipality of Central Elgin, as a party herein, and all participants identified above no less than 30 days prior to the date of such Public Information Session; and provided further that the Municipality of Central Elgin shall assist the Applicant/Appellant in securing the said facility at which the Public Information Session should be held.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other party and the Clerk of the Municipality of Central Elgin a list of the

witnesses and the order in which they will be called. This list must be delivered at least 60 calendar days before the hearing.

9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 13. 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.
10. 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 13.
11. Unless otherwise directed herein, any witness intending to provide evidence to the Tribunal shall prepare and provide to the Tribunal and the parties a witness statement at least 15 calendar days before the hearing or the witness may not give oral evidence at the hearing.
12. Any participant identified above must provide to the Tribunal and the parties a participant statement at least 15 calendar days before the hearing, failing which the participant may not give oral evidence at the hearing.
13. On or before February 1, 2019, the parties shall provide copies of their witness and expert witness statements to the Tribunal, the other party and the Clerk of the Municipality of Central Elgin.
14. On or before March 1, 2019, the parties shall provide copies of their visual evidence to the other party. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
15. Parties may provide to the other party and file with the Clerk of the Municipality of Central Elgin a written response to any written evidence within 7 days after the evidence is received.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.

(See Rule 10 of the Tribunals' 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 a witness' written evidence to the other party must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
18. Documents shall be served and filed by personal service, registered mail or electronically, or otherwise as the Tribunal may direct. The service and filing of documents electronically shall be governed by the Tribunal's Rule 7 on this subject.

Documents delivered by mail shall be deemed to have been received five business days after the date of registration.

19. 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.

This member is not seized.

So orders the Tribunal.

BEFORE:

Name of Member) Date:
)
)

TRIBUNAL REGISTRAR

SCHEDULE "A"

Issues List

Issues Jointly Identified By The Parties

1. Did Central Elgin fail to make a decision relative to the subject Zoning By-Law Amendment Application within the timeframe provided for in the *Planning Act*?

(Note: Failure to make decision conceded by Municipality of Central Elgin, subject to reservation of right to call brief evidence of circumstances leading to such failure.)
2. Is the development proposed by the Applicant/Appellant consistent with the *Provincial Policy Statement, 2014*?
3. Do the development and zoning by-law amendments proposed by the Applicant/Appellant conform to the relevant Official Plans?
4. Will the development proposed by the Applicant/Appellant cause unacceptable adverse impact upon either the subject or adjacent lands?
5. Do the development and zoning by-law amendments proposed by the Applicant/Appellant represent sound land use planning?
6. If the Application/Appeal is to be allowed, either in whole or in part, what amendments to the Zoning By-Law are to be ordered?

Issue Identified Only By The Municipality of Central Elgin (And Opposed By Prespa Construction Limited)

7. At the hearing of this appeal, will the Tribunal hear evidence and make its decision in respect of a modified development proposal by the Applicant/Appellant Prespa Construction Limited, providing for construction of two (2) – five (5) storey buildings? In this regard, it is acknowledged that notice of such modification was provided during the course of the prehearing conference conducted on August 22, 2018, and that processes for disclosure of details and specifications and supporting submissions and materials are otherwise provided in this Procedural Order.