

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** October 05, 2017

**CASE NO(S):** PL140042

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

Appellant:	Abode Varsity Living Inc.
Appellant:	Loblaw Properties Ltd.
Appellant:	Terra View Custom Homes Inc. & Lambden Farm Trust
Appellant:	Thomasfield Homes Limited
Appellant (jointly):	D Four Guelph Developments Limited, Fieldgate Commercial Developments Limited, Greenways Group Guelph, Living Rivers; and others
Subject:	Proposed Official Plan Amendment No. 48
Municipality:	City of Guelph
OMB Case No.:	PL140042
OMB File No.:	PL140042
OMB Case Name:	Whiteley v. Guelph (City)

**Heard:** September 25, 2017 by telephone conference call

**APPEARANCES:**

**Parties**

**Counsel**

City of Guelph ("City")

P. Pickfield and D. Mast

Abode Varsity Living Inc.

A. DeGasperis

Loblaw Properties Limited

T. Halinski

Silvercreek Guelph Developments Limited, D Four Guelph

T. Halinski

Developments Limited, Fieldgate  
Commercial Developments Limited

Dr. Hugh Whiteley

I. Flett

Laura Murr

I. Flett

Herbert Neumann, Frank Cerniuk,  
Sieben Holdings Limited, H and J  
Produce Limited McEnergy Industry  
Limited (Neumann Group)

S. Kaufman

Lambden Farm Trust

S. Kaufman

Thomasfield Homes Limited

K. Thompson

Southedge Ltd. and 2298667 Ontario  
Inc.

K. Thompson

Grand River Conservation Authority

M. McCluskey

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER ON  
SEPTEMBER 25, 2017 AND ORDER OF THE BOARD**

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**PRELIMINARY**

[1] By Order dated July 10, 2017, Member Taylor directed that this Settlement Hearing be scheduled on this date to address the “housekeeping phase” of the proceedings, and provided related directions for the filing of materials and also addressing the matter of the form of draft Procedural Order (“PO”).

[2] The Board thereafter received the written materials including the Affidavit of Melissa Castellan Aldunate, a land use planner, sworn September 15, 2017, with a number of exhibits and supporting materials (Volume 2 of the three volumes was received in electronic format for the hearing). For the purposes of this hearing, the Board has reviewed Ms. Aldunate’s CV and her qualifications and recognizes Ms. Aldunate as an expert planner qualified to provide planning opinion evidence.

[3] The overall goal of this Settlement Hearing was to present an updated version of Official Plan Amendment Number 48 (“OPA 48”) which would collectively address a number of the appeals, parse out those remaining appeal matters to be addressed in subsequent hearings, and allow for the final implementation of the reviewed, updated and modified OPA arising from the various processes and proceedings which precede this date.

[4] In the course of this hearing, a further deferred issue relating to one contested section of OPA 48 was addressed dealt with, and the parties also again addressed the final form of the PO.

#### **SUMMARY OF THE FINAL AND COLLECTED MODIFICATIONS TO OPA 48**

[5] The Board had the benefit of the supporting affidavit planning evidence from Ms. Aldunate and has reviewed the thorough, detailed and annotated version of the submitted OPA 48 complete with additional commentary, and the colour coded detail setting out the background to the revisions and modifications to OPA 48. The annotated modifications reflect the grouped changes arising from three different aspects of the proceedings:

- (a) One group of changes arises from the settlement of the appeals by Dr. Hugh Whiteley and Thomasfield Homes Limited, as well as the two prior Orders of the Board implementing the settlement. There was a settlement of certain aspects of the appeal by Dr, Whiteley approved by the Board in the decision issued November 20, 2015 (the “Whiteley Settlement”). These changes also reflect a settlement of the Thomasfield Homes Limited appeal approved by the Board in the decision issued July 10, 2017 (the “Thomasfield Settlement”);

- (b) The second grouping of modifications to OPA 48 arise from the settlement of certain aspects of the appeal by Loblaw Properties Limited (the “Loblaw Settlement”) now presented to the Board for review and approval in this Settlement Hearing;
- (c) The third grouping of modifications to OPA 48 within the presented draft, incorporate a number of administrative and housekeeping modifications incorporating Council and Board approved decisions, as well as minor edits relating to grammar, spelling, numbering sequences and other drafting and housekeeping adjustments. All other components of OPA 48, as presented remain as they were approved by the Ministry of Municipal Affairs and Housing (“Ministry”) on December 11, 2013.

[6] Save and except for those two issues addressed below, all parties were in agreement to the presentation of the proposed settlement as to OPA 48. A representative of the Ministry was not in attendance at the Settlement Hearing but had advised the Board that it had reviewed all of the materials filed and took no position on the request for the approval of those portions of OPA 48 provided for in the settlement documentation.

#### **REMAINING SITE-SPECIFIC and POLICY-SPECIFIC APPEALS**

[7] In the event the Board is to approve the proposed form of OPA 48 as presented at this “Housekeeping Settlement”, it is understood that there would remain four additional appeals which have been parsed out from the appeals within the proceeding. They are as follows:

- (a) The hearing of the remaining site-specific issues in the appeal filed by Dr. Whiteley as it relates to the lands owned by the Grand River Conservation Authority and located at Pioneer Trail and Niska Road in the City (“the Remaining Whiteley Appeal”). A hearing date has already been set by

Member Taylor in his decision of July 10, 2017, to commence on March 12, 2018.

- (b) The hearing of the site-specific appeals remaining, and excepted from, the Loblaw Settlement presented to the Board in today's Settlement Hearing, applying to a number of municipal properties as identified in the Minutes of Settlement filed in support of the Loblaw Settlement ("the Remaining Loblaw Appeal");
- (c) The hearing of site-specific appeals relating to properties owned by Silvercreek Guelph Developments Limited, D Four Guelph Developments Limited and Fieldgate Commercial Developments Limited and located at 35 and 40 Silvercreek Parkway South ("the Remaining Silvercreek Parkway Appeals").
- (d) The hearing of one outstanding policy-specific appeal relating to the appeal by Abode Varsity Living Inc. as it relates to the addition of policies to encourage purpose-built student housing ("the Remaining Abode Appeal")

(Collectively, these four remaining appeals can be referred to as "the Remaining Appeals")

#### **ADDITIONAL DEFERRED POLICY – s. 7.3.7 – RECREATION, PARKS AND CULTURE STRATEGIC MASTER PLAN – DEFERRED MOTION**

[8] In the course of the Settlement Hearing, there was one outstanding issue which the City and Dr. Whiteley had not resolved and which gave rise to the need for a further hearing. This was the singular matter within the proposed settlement about which there was not full agreement. This relates to opposition from Dr. Whiteley in relation to Item 48, section 7.3.7 of OPA 48. It is Dr. Whiteley's position that this section of the Official Plan ("OP") within OPA 48 attempts to improperly introduce the City's Recreation, Parks

and Culture Strategic Master Plan (“RPC Strategic Master Plan”) within the policies of the OP but without the proper approval and adoption of the Plan or the benefit of proper and complete public review and consultation.

[9] The City’s position is that the RPC Strategic Master Plan has been appropriately adopted and incorporated into the OP to be referenced for future use and guidance.

[10] In the course of submissions, on this point, it is clear that there is also a matter of *issue estoppel*. The City takes the position that the Whiteley Settlement in November 2015 was intended to resolve all outstanding matters, other than those site specific matters in the Remaining Whiteley Appeal and as such, Dr. Whiteley is now estopped from raising this challenge to the wording of Item 48, s. 7.3.7 of OPA 48.

[11] It does not appear to the Board that there is any dispute that the RPC Strategic Master Plan is intended to be applied for guidance within the OP and implemented to ensure that the goals and objectives are being achieved, but it does appear that there may be legal and/or procedural issues relating to the adoption of the RPC Strategic Master Plan. Unfortunately, as the parties did not turn their minds to this for the purposes of this Settlement Hearing, no material was prepared or provided and the Board has insufficient information and material to determine the threshold question of *issue estoppel*, or to resolve these outstanding issues.

[12] Accordingly the preliminary threshold issue as to whether Dr. Whiteley is estopped from objecting to this section of OPA 48 on the basis of the Whiteley Settlement and the issue of whether Item 48, s. 7.3.7 of OPA 48 should be amended or benefit from further formalities of adoption and resolution (or the completion of public consultation processes) and such other related issues relating to that section which Dr. Whiteley wishes to raise must be determined by Motion. Dr. Whiteley is accordingly directed to file the appropriate Motion on this issue before the Board on or before **Tuesday, November 21, 2017**. The City will respond in according to the Board’s *Rules of Practice and Procedure*. The Motion may be heard by way of Telephone Conference

Call (“TCC”) on a date to be determined by the Board. Depending upon the manner in which the threshold estoppel issue is decided the presiding panel at the hearing may adjudicate the issue or alternatively defer the policy-specific issue to be dealt with upon *viva voce* evidence at the hearing of the Remaining Whiteley Appeal. I am not seized in relation to this Motion.

[13] As a result of this additional policy-specific matter to be deferred in relation to OPA 48, it was confirmed that the form of the draft PO initially presented to the Board would reflect the fact that this additional issue relating to Item 48, section 7.3.7 of OPA 48 would be deferred to be subsequently dealt with in due course. The draft PO has now been revised and accordingly, the Board will withhold its order only with respect to Item 48, Policy 7.3.7 of OPA 48, subject to the outcome of the Motion to be brought. Otherwise the policies and schedules of OPA 48, as modified in accordance with the policies and schedules, are to be approved and deemed to come into full force and effect on the date of issuance of this Order.

### **PROCEDURAL ORDER**

[14] The draft PO as submitted to the Board, and to be issued in accordance with the provisions below, provides for the manner in which the four Remaining Appeals are to proceed, as well as the additional issue to be addressed by way of Motion. The parties have advised the Board that the draft PO presented at this Settlement Hearing is in approved form save and except for Issue 1 in the Niska Road Lands Phase (the Remaining Whiteley Appeal). This issue involves the City, Dr. Whiteley and Grand River Conservation Authority.

[15] Accordingly, the issuance of the PO shall be deferred until such time as those three parties have had the opportunity to resolve the wording of that Issue 1. The parties shall cooperate to confirm the final form of this Issue on or before November 6, 2017 and provide the final draft of the PO for approval and issuance. In the event that

the parties are unable to resolve this remaining issue relating to the PO, the City shall contact the Board to obtain a TCC with the Board to resolve this remaining issue.

[16] The draft PO filed as Exhibit B to the Affidavit of Ms. Aldunate shall accordingly issue, subject to the resolution of Issue 1 on page 12, Attachment 3 of the PO.

## **PLANNING EVIDENCE AND APPROVAL OF SETTLEMENT**

[17] In support of the Settlement, the Board has reviewed the supporting affidavit material and the Exhibits, which include the Minutes of Settlement with Loblaw Properties Limited. There was no opposition to the proposed settlement save and except as set out above, which issue is deferred to be dealt with at the Motion.

[18] Ms. Aldunate has provided her expert planning opinion specifically with respect to the Loblaw Settlement and opines that the settlement upholds the policy directions approved by the City and provides clarity and consistency of language with respect to the urban design policies and community mixed-node policies and associated land use designations. The Board accepts this uncontroverted evidence and having reviewed the Minutes of Settlement and those modifications to OPA 48 flowing from the Loblaw Settlement, the Board finds that these changes represent good planning.

[19] The Board also agrees and accepts Ms. Aldunate's planning opinions regarding OPA 48 as it has been presented to the Board for approval and which contains those modifications and amendments summarized in paragraph [3] above. Ms. Aldunate opines that the modified form of OPA 48 is consistent with the Provincial Policy Statement 2014, and conforms to the Growth Plan for the Greater Golden Horseshoe 2017. Although the City will be undergoing its further conformity exercise under its municipal comprehensive review, as it will now be in force, OPA 48 supports the City's Growth Plan 2006 as it was approved by OPA 39. As well it: (a) upholds the policy directions established through the background studies to the OP update; (b) maintains the approved policy framework and land use designations for site-specific City Council

approved Official Plan amendments and Board decisions; and (c) is consistent with the Council and Board approved amendments and decisions as further outlined above.

[20] The Board further agrees that the final form of OPA 48 as presented provides improved clarity, consistency and legibility as it finally will bring into force those policies after the extended period of review, appeals, and modification.

[21] As such, the Board accepts Ms. Aldunate opinion and recommendations that OPA 48 represents good planning, is in the public interest and should be approved. As the Board has been advised, OPA 48 as now approved through the Order of the Board will be in place as a single consolidated version.

[22] For the reasons indicated herein, the Board also finds that it is appropriate that those remaining site-specific and policy-specific issues and matters referred to in paragraph [5] of this Decision (and the matter of the Motion relating to Item 48, Section 7.3.7 of OPA 48), be deferred to be dealt with by the Board in accordance with the terms of the draft PO to be implemented as part of this Settlement. The compartmentalizing and deferral of these separate issues in this manner represents good planning processes, which will avoid any further delay in the final approval of the remaining substantial balance of OPA 48 intended by the parties.

## **ORDERS**

[23] The Board accordingly Orders as follows:

- (1) The appeal of Official Plan Amendment No. 48 to the City of Guelph Official Plan (OPA 48) by Loblaw Properties Limited is allowed in part, in order to give effect to the following modifications set out in paragraph [23](2) of this Order.

- (2) OPA 48 is hereby modified , as shown in the modified version of OPA 48 provided in Exhibit “E” to the Affidavit of Melissa Castellan Aldunate sworn September 15, 2017 (hereinafter “Exhibit E”), by
- a. Adding the following definition of “Main Street Area” to the glossary  
  
“Main Street Area – a pedestrian oriented commercial or mixed-use area centred on a public street, private road or internal driveway or private street that provides a focal point for surrounding neighbourhoods.”
  - b. Implementing modifications, as shown in Exhibit “E”, to the following sections of OPA 48: 3.11.3; 3.11.4; 5.8.11; 8.2.11; 8.6.14; 8.8.1 ii), iv), and v); 8.10.3 iii); 8.12.1; 8.13.3; 8.20.1; 9.4.2.13; and 9.4.4.13.
  - c. Deleting the following policies: 8.12.6 and 9.4.2.7
- (3) The policies and schedules of OPA 48, as modified in accordance with the policies and schedules attached in Exhibit “E”, are hereby approved, and are deemed on the date of issuance of this Order to come into full force and effect, subject to paragraph [23](4) of this Order, and with the exception of the following specific policies as they apply to the following specific geographic locations in the City of Guelph, to be addressed at subsequent phases of the hearing in this matter:
- a. The land use designation for the lands owned by the Grand River Conservation Authority and located at Pioneer Trail and Niska Road in Guelph with the legal description PT LT 13 CON 5 Puslinch PT 1, 61R1483;

- b. Policies 3.11.3, 3.11.7, 8.10.3(i), 8.12.2, 8.6.1, 8.6.2, 8.6.10, 8.6.13, 8.6.14, 9.4.2.6, 8.13.6 and 8.23.2 only as they apply to lands located at lands known municipally as 35 and 40 Silvercreek Parkway South;
  - c. Policies 3.11.5, 3.11.6, 3.11.7, 8.6.1, 8.6.2, 9.4.2.2, 9.4.2.3, and 9.4.2.6 only as they relate to lands known municipally as 115 Watson Parkway North (formerly 72 Watson Road North), 1750 Gordon Street, 84 Clair Road East, 124 Clair Road East, 158 Clair Road East, 174 Clair Road East, 190 Clair Road East, 202 Clair Road East, 960-1045 Paisley Road, 297-299 Eramosa Road, 111-191 Silvercreek Parkway North, 35 Harvard Road, 160, 170, 200 and 210 Kortright Road West, and 98 Farley Drive; and
  - d. The potential addition of policies related to student housing only as they relate to those portions of the Gordon Street and Stone Road Intensification corridors identified on the map attached to the Notice of Appeal letter of Abode Varsity Living Inc. dated December 16, 2013.
- (4) The Board withholds its order only with respect to Item 48, Policy 7.3.7 of OPA 48, subject to the outcome of a motion to be brought on behalf of one of the parties, Dr. Hugh Whiteley, on or before November 21, 2017 to be heard on a date to be set by the Board.

[24] The Board approves the Procedural Order attached as Exhibit B of the Affidavit of Ms. Aldunate sworn September 15, 2017, with the exception of Issue 1 in the Niska Road Lands Phase at page 12 of the Procedural Order, for which the Parties will providing alternative wording on or before November 6, 2017. At such time as the City shall advise the Board, and provide the amended wording of that Issue 1, the Procedural Order may then issue. If the Parties cannot resolve the wording for this

issue by that date the Board may be spoken to way of TCC at a time that is convenient to the Board and to the Parties and for that purpose this panel will remain seized.

*“David L. Lanthier”*

DAVID L. LANTHIER  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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