

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



ISSUE DATE: December 03, 2020

CASE NO(S): PL190267

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 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Viridis Development Group Inc. and 2289238 Ontario Inc.
Subject: Request to amend the Official Plan - Failure of City of Kitchener to adopt the requested amendment
Existing Designation: General Industrial Employment
Proposed Designation: Mixed Use
Purpose: To permit four residential towers
Property Address/Description: Courtland Road East and Block Line Road
Municipality: City of Kitchener
Municipality File No.: OP17/001/C/GS
LPAT Case No.: PL190267
LPAT File No.: PL190267
LPAT Case Name: Viridis Development Group Inc. v. Kitchener (City)

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

Applicant and Appellant: Viridis Development Group Inc. and 2289238 Ontario Inc.
Subject: Application to amend Zoning By-law No. 85-1 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning: General Industrial (M-2)
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit four residential towers
Property Address/Description: Courtland Road East and Block Line Road
Municipality: City of Kitchener
Municipality File No.: ZC17/005/C/GS
LPAT Case No.: PL190267

LPAT File No.: PL190268

Heard: September 28 to October 9, 2020 by via Video Hearing

APPEARANCES:

Parties

Counsel

Viridis Development Group Inc.
and 2289238 Ontario Inc.
("Applicants"/"Appellants")

D. Baker, R. Kehar

City of Kitchener ("City")

L. MacDonald

Regional Municipality of Waterloo
("Region")

F. McCrea, A. Gazzola

Canadian National Railway
Company ("CN")

K. Sliwa, A. Kurts, M. Awan

**MEMORANDUM OF ORAL DECISION DELIVERED BY JATINDER BHULLAR ON
OCTOBER 9, 2020 AND ORDER OF THE TRIBUNAL**

[1] The Applicants/Appellants, Viridis Development Group Inc. and 2289238 Ontario Inc. appealed the City and Region's failure to make a decision within the statutory time period on an Official Plan Amendment ("OPA") to the Kitchener Official Plan ("OP") and a Zoning By-law Amendment ("ZBA") to the Kitchener Zoning By-law ("ZBL"). The appeals were filed originally under the legislative framework of Bill 139. The Parties have previously agreed that these appeals are now governed by Bill 108 and a conventional *de-novo* hearing will ensue, including oral testimony and cross-examination.

[2] The Applicants propose a mixed-use development of retail and office uses with four towers containing 1,300 dwelling units on an elongated parcel of land at the northwest corner of Courtland Road East and Block Line Road ("site"). The site is approximately 2.79 hectares ("ha") in size. In order to proceed with a phased

development, the site has been split into four parcels per consent granted by the Committee of Adjustment. The site adjoins a transit station for the Region's light rail transit and connecting buses at the intersection of Courtland Avenue East and Block Line Road.

[3] The neighbourhood context includes a rail corridor consisting of one track to the west of the site owned by Canadian Pacific ("CP") but operated by CN, and additional tracks and railyard owned and operated by CN. Physically the site abuts CP property and an operational CP main line. Across the north-east is Courtland Avenue East with a mix of detached, townhouse and high-rise apartment dwellings.

[4] The Region and the City informed the Tribunal before the hearing and confirmed at the start of the hearing that they have reached a settlement of all of their issues with the Applicant/Appellant . The Region and the City informed that they will not bring forward any witnesses or evidence before the Tribunal at this hearing.

[5] In spite of the settlement between the statutory parties, CN stated that they oppose the proposed development at the site.

PARTIES

[6] The statutory Parties are the Applicant/Appellant and the approval authorities – the Region for the OPA, and the City for the ZBA.

[7] CN operates an adjoining railyard and also operates a railway that is within 300 metres ("m") of the land subject to the Application for OPA and was given notice of the Application pursuant to O.Reg.543/06 under the *Planning Act* ("Act"). These notices are given to neighbouring municipalities, utility providers, school boards, conservation authorities, adjacent property owners, etc. as appropriate. The recipients of these

notices are treated as commenting agencies.

MOTION TO EXCLUDE WITNESSES

[8] The Applicant/Appellant filed a motion to exclude certain witnesses to be orally heard on September 28, 2020. This motion failed to comply with the Tribunal's *Rules of Practice and Procedures* for Notice of Motion. The Applicant/Appellant argued that an abridgement be authorized for this Motion to be heard on September 28, 2020. The Tribunal determined that there was not a justification for allowing the abridgement as the matters were well known to Applicant/Appellant well in advance and that there were alternate means available to contest and raise concerns regarding specific witnesses at the time of their qualification by the Tribunal.

[9] The request for abridgement was denied and the Motion was not heard.

ISSUES LIST MOTION

[10] The Applicant/Appellant gave notice and served a Motion to scope the Issues List on the parties to be orally heard at this VH. The notice was not in compliance with the Tribunal *Rules of Practice and Procedure* with respect to serving the Notice of Motion. The Tribunal having reviewed the submissions of all parties authorized the abridgment to the filing of the Motion as September 15, 2020.

[11] The Motion requested the elimination of Issues 1-11 and 17 reflecting that the Applicants/Appellants, the Region and the City have settled their Issues 1-11 and that the experts' meetings have determined that Issue 17 no longer required further consideration.

[12] The Motion also requested that Issue 12 be reviewed and further scoped as the CN witness evidence has used Issue 12 and created substantial scope expansion to the extent of indirectly introducing new issues not on the Issues List (“IL”).

[13] The Region and the City supported deletion of Issues 1-11 but took no other position on the Motion. The Motion further stipulated that all witness statements and reply witness statements be duly redacted and only the revised documents be included in evidence.

[14] CN opposed the Motion in general but agreed that they will accept the removal of Issues 2, 3, 4, 9, 11 and 17 from the IL. CN specifically opposed the relief sought by Viridis regarding the redacting of documents provided by CN witnesses.

[15] CN argued that they were last to add issues to the IL and have assumed that they were owners of all issues on the IL. This was strongly opposed by Applicant/Appellant based on the fact that all activities inclusive of witness statements, reply witness statements have clearly followed the association of the issues with the party who raised these. The creation of case-in-chief supporting material and also responding witness statements followed this recognition.

[16] Having considered the submitted material and the oral submissions, the Tribunal allowed the Motion in part with respect to the removal of issues and ordered that the Issues 2, 3, 4, 9, 11 and 17 were no longer before the Tribunal at this hearing. However, the Tribunal rejected the Applicant/Appellant request for redacting of documents. The counsel were directed to provide appropriate advice to their witnesses to comply with the Tribunal decision.

[17] The rescoping of Issue 12 belonging to CN was deliberated upon extensively to ensure it was properly scoped.

[18] Based on the oral submissions and submitted Motion materials; the Tribunal determined that the clarification of Issue 12 was not only necessary but also appropriate. Issue 12 was modified, and Tribunal ordered it to be scoped as follows;

“12. Does the proposed development appropriately address the site specific compatibility with adjoining CN yard operations which are part of a transportation and infrastructure corridor?”

KEY ISSUES

[19] The key Issues to be determined by the Tribunal are;

- 1) Does the proposal impinge on CN’s current or future operational activities at the railyard?, and
- 2) Given the proximity of the proposed development, does the proposal mitigate against any impacts of existing railyard operations?

WITNESSES

[20] The Applicant/Appellant called four experts. Douglas Stewart, a Registered Professional Planner provided expert opinion evidence on land use planning. John Perks, a Professional Engineer provided expert opinion evidence on noise and vibrations. Sam Du, a Professional Engineer provided expert opinion evidence on mitigation for sound and vibrations. Dave Poole, a Professional Engineer provided expert opinion evidence on safety and related contingency matters.

[21] CN called two witnesses who were employees of CN. These were conditionally qualified to generally provide fact based evidence. Michael Vallins, a Professional Engineer at CN within the context of public works and liaison; and Chris Nicholson, CN employee working as a safety officer in matters of rail safety.

[22] CN's three other witnesses were qualified to provide expert opinion evidence in their own areas of expertise. Gaylen Layden, a Professional Engineer was qualified for structural engineering with experience in crash walls. Dalila Giusti, a Professional Engineer was qualified for noise and vibrations. Chad John-Baptiste, a Registered Professional Planner was qualified to provide expert land use planning evidence.

PROPOSED DEVELOPMENT IMPACTS ON CN RAILYARD OPERATIONS

[23] This aspect relates to CN as a property owner/operator adjacent to the proposed development. CN has a right to participate to advocate for and protect their rights for businesses operating thereof.

[24] Mr. Poole carried out a Development Viability Assessment ("DVA") for the Applicant/Appellant. He was provided with data for existing activities as well as growth forecast for the same activities. He confirmed that he has used all growth projection and trends provided to him by CN. He indicated that whereas he received information regarding growth, he was not provided with any specific information to include in his assessments including the DVA. Mr. Poole concluded that DVA shows that the proposal was feasible with due measures and plans established for contingencies.

[25] Mr. Stewart in his expert planning evidence showed that there are no negative impacts of a suitably mitigated proposed development upon the CN railyard operations.

[26] CN provided little evidence how their present operations would be impacted by the proposed development. Mr. Vallins identified that any possibility of accidents at the railyard and public witnessing the consequences of such accidents, like a fatality could mark them for life. Mr. Vallins is a Civil Engineer, he was not qualified to provide such psychological assessments.

[27] While not explicitly identified as such, CN witnesses implied that any complaints made to federal licencing or regulatory bodies against CN railyard operations are very costly for the operators to address. They alluded to the possibility that with more people living adjacent to the railyard, such complaints could increase substantially. CN did not provide any metrics or forecasts of the same. CN stated that for the last year since they took back operations control, there have been no public complaints due to operations at this railyard.

[28] Most of the other potential impacts on the railyard from the proposed development revolved around possible future uses or changes at the railyard. Mr. Nicholson for CN submitted that there was a possibility of cargo transfer that could take place at the yard. He showed visually how possibly toxic liquids could be transferred from a rail car to a truck. He stated that such has been done at other locations for CN's petro-chemical customers. He provided no evidence to show if such operations occurred at the Huron railyard or were either feasible or planned for the future. Mr. Nicholson also visually showed railway ties stacked next to railway lines. He indicated that there were some non-specific instances of vandalism or mischief where these have been set alight.

[29] Ms. Guisti stated that there was a possibility of noisier activities happening in the future. She referred to engine load testing as an example. Ms. Guisti could not share or provide either plans or levels of such activities related to the Huron railyard.

[30] The Tribunal finds that the evidence and submissions made by Mr. Nicholson and Ms. Guisti were general and non-quantifiable.

[31] The Tribunal finds that the Applicant/Appellant has shown that there are no negative impacts on the railyard and CN at present or into the future. The Tribunal also finds that CN has failed to establish any minimal case or provide credible evidence showing negative impacts of the Applicant/Appellant proposal on their existing or future railyard operations.

RAILYARD OPERATIONS: IMPACTS ON THE PROPOSED DEVELOPMENT

[32] CN involvement in this Application was initiated through the Region seeking their comments on the proposed development. It was noted by the Region and the City that as a commenting agency, CN has no statutory rights for the approval or denial of a planning application before the Region or the City.

[33] CN identified key issues arising out of railyard operations possibly impacting the proposed development as;

- a. Safety;
- b. Noise; and
- c. Vibrations.

[34] The Region and the City settled and resolved all their issues as part of which they informed the Tribunal that they had regard and consideration of any commenting agency comments including CN and suitable responses provided by the Applicant/Appellant.

[35] Regardless of this, CN continued with the case on the basis that their comments have not been addressed appropriately by the parties.

SAFETY

[36] In order to assess safety and the need and possibility for mitigation, Mr. Poole carried out and produced Development Viability Assessment (“DVA”) studies. He produced updates based on CN’s comments. These DVAs were based on inputs provided by CN in terms of railyard operations and train traffic traversing the corridor. Mr. Poole stated that he used databases related to railway accidents, characteristics of industrial accidents and modelling to accommodate growth in rail traffic. He further

stated that he used the recommended methodologies and guidelines in RAC and FMC (“Guidelines”) documents. Mr. Poole further asserted that his DVAs were consistent with generally accepted industry practices.

[37] Mr. Poole opined that with the rail through traffic running at railyard limited speeds of about ten miles per hour and a total of 2-4 trains per day, his modelling showed that probability of an accident which could have been mitigated against is so low that using the Guidelines, no mitigation was required for such events.

[38] Mr. Poole also detailed contingency plans for potential other industrial accident types related to CN railyard operations. These included slow leaking rail cars, spills and fires. He provided detailed analysis and recommendations on how to manage these contingencies.

[39] Ms. Layden on behalf of CN stated that the modelling used by Mr. Poole was inappropriate. She added a worst case scenario study was needed and not the probabilistic model. In cross-examination Ms. Layden confirmed that she herself has never done a DVA study. Mr. Poole replied to Ms. Layden’s statements and submitted that DVAs are done as he has done and that the same is recommended in the Guidelines.

[40] Ms. Layden conjectured that a derailment could lead to progressive collapse of the planned towers in the proposal akin to the 911 terrorist attacks in New York. She also stated that the ION LRT station was located inappropriately with respect to the CN railyard. She did not establish any credible evidentiary basis for these assertions.

[41] Mr. Nicholson presented evidence on the possible impacts of hazardous goods accidents and the smartphone application that allows for determination of area of public safety concern. When examined he admitted that his screengrabs were inappropriately

collated and not accurate. There was no debate as to use of such tools by local fire or other agencies for managing such accidents and to undertake appropriate public protection measures.

[42] The Tribunal prefers the evidence of Mr. Poole and finds that the proposal has due regard for and plans for managing any issues related to railyard impacts with respect to safety.

NOISE

[43] Mr. Perks provided detailed analysis regarding the impacts of noise emanating from the railyard. He based his evidence on an Environmental Noise Study carried out by IBI Group under his direction. Mr. Perks advised that the study was refined based on comments received from the Region, the City as well as CN.

[44] Mr. Perks presented to the Tribunal detailed evidence on the methodology and characterization of different types of stationary noise sources.

[45] Mr. Perks determined that the proposed development is only feasible as a Class 4 development which is an allowed form of development. He added that this will require extra on building noise mitigation measure to ensure that the recommended noise standards are met as well as restrictions on type of openings for windows or other services. He provided an example of buffer windows as a technique previously approved for possible use in such Class 4 developments.

[46] Mr. Perks' recommended specific mitigation measures which covered all different uses and noise exposures. These included central air conditioning to allow windows and doors to be closed, special building components, enclosed noise buffers and noise barriers for outdoor living areas.

[47] Mr. Perks concluded that the development as proposed is technically feasible and can meet the requirements of the Provincial and Regional environmental guidelines. Mr. Perks stated that this compliance includes meeting the applicable requirements set under Provincial MECP NPC-300 guidelines.

[48] Ms. Guisti opined that it was not feasible to mitigate against railyard noises. She spent significant time upon the use of enclosed noise buffers as being not of use in this development or being inadequate. Ms. Guisti under cross-examination was asked about the approval and positive direction provided by the Ministry of the Environment ("MOE") in the past. She asserted that she disagreed their modelling and calculation methodologies and has so identified the same to the MOE. She conceded that her comments had no affect on the MOE either modifying their approval or qualification regarding deploying such mitigation options.

[49] Ms. Guisti also raised concerns that the type of noise which was more of impulsive nature, was not properly modeled by Mr. Perks. This was not sustained as Mr. Perks showed referring to his modelling evidence that all such were modeled consistent with prevailing acoustic engineering methodologies.

[50] Ms. Guisti admitted under cross-examination that the CN feedback provided to Mr. Perks was mimicking her peer review reports and did not fully cover the peer review analysis. CN did not file in evidence the peer review report conducted by Ms. Guisti. She was thus forced to interpret other people's, feedback comments provided to the Applicant/Appellant for consideration. The Applicant/Appellant submitted that this approach taken by CN created gaps and timing issues. The Applicant/Appellant submitted that they had to work in an environment of changing scenarios and stipulations provided by CN.

[51] Mr. Du on behalf of the Applicant/Appellant provided detailed analysis of mitigation options that were proposed by Mr. Perks. Mr. Du showed that such can be adequately deployed in the proposed development.

[52] The Tribunal prefers the evidence of Mr. Perks over Ms. Giusti as it withstood examination testing, was complete and comprehensive. With the additional evidentiary support provided by Mr. Du for implementation of noise mitigation measures, the Tribunal finds that the proposal has suitable options available to mitigate noise for successful development as proposed.

VIBRATIONS

[54] Mr. Du on behalf of the Applicant/Appellant provided details of technical work carried out to model vibrations originating from the railyard operations.

[53] Mr. Du opined that the ground-borne vibration velocity magnitudes exceeded the Guidelines when all sources were considered. He stated this conclusion was based on considering all such sources including the Light Rapid Transit ("LRT") and the railyard.

[54] Mr. Du recommended that mitigation will be necessary and various mitigation measures are available. He stated that these could include decoupling noise sensitive uses from the underground structure. He also added that isolation membrane could also be deployed to isolate underground structure from the surrounding soil. Mr. Du added that the specific mitigation measures are determined at the time when the building and structural designs are more advanced.

[55] Ms. Guisti on behalf of CN did not contest Mr. Du's evidence.

[56] The Tribunal based on the uncontroverted evidence of Mr. Du finds that the vibration aspects can be mitigated against and their final determination will occur when the building/structural designs are further finalized.

PLANNING CONSIDERATIONS

[57] Mr. Stewart opined that the proposed OPA and ZBA have regard for the provincial interest as in s. 2 of the Act. He specifically reviewed ss. (h), (j), (p), (q) and (r) within s. 2. He stated that the proposal provides for orderly development of a vacant lot and is an appropriate location for growth and development; contributes towards a range of housing choices; being next to the LRT Blockline station and on the main route for Grand River Transit (“GRT”) routes is thus transit supportive; and with a mix of residential, commercial and small business deployment will contribute towards vibrancy in the neighbourhood. Mr. Stewart added that s. 37 considerations will contribute towards affordable housing as well.

[58] Mr. Stewart opined that the proposed development is consistent with the Provincial Policy Statement 2020 (“PPS 2020”). He stated that in consideration of s. 1.1.1 the proposal contributes towards healthy, livable and safe communities by providing for efficient land use, delivery of market based housing options, transit supportive and optimizes transit investment through greater access and use of the same.

[59] Mr. Stewart also reviewed PPS 2020 policy 1.4.1 and stated that the proposal is consistent in that it adds to the availability of a range of housing options and densities. He added that the proposal also makes use of in place municipal facilities and services as directed in policy 1.4.3 (c) of PPS 2020.

[60] Mr. John-Baptiste on behalf of CN opined that the proposal is inconsistent with policies 1.6.8 and policy 1.6.9 of PPS 2020. These policies relate to transportation and infrastructure corridors and facilities like rail.

[61] Mr. Joh-Baptiste stated that policy 1.6.8.2 of PPS 2020 requires that the rail corridors are directed to be protected for the long term. However, in cross-examination Mr. Joh-Baptiste could not establish how the proposal negatively impacts the railyard or rail operations in the near or longer term

[62] Mr. John-Baptiste further opined that policy 1.6.8.3 of PPS 2020 requires that any new developments adjacent to facilities like the CN railyard should be compatible with and supportive of the long-term purposes of the corridor. In cross examination Mr. John-Baptiste admitted that there were various examples of sensitive residential uses co-existing adjacent to rail corridors. Mr. John-Baptiste could not substantiate how any planned future uses were impinged by the proposed development of the site by the Applicant/Appellant.

[63] Mr. John-Baptiste also brought up policy 1.6.9 and 1.2.6 of the PPS 2020 to assert that the proposal was inconsistent, or land use was incompatible with these policies. In applying these policies as a development in the vicinity of a rail facilities, he stated that any developments must protect the long-term operation and economic role of rail operations. In cross examination he agreed that policy 1.6.9 and 1.2.6 allow sensitive land uses, as proposed, if the same are designed appropriately, buffered or any impacts mitigated. The Tribunal notes that such evidence is satisfactorily provided by the appropriate safety, noise and vibration experts as noted in this decision.

[64] In reviewing the conformity with the Growth Plan for the Greater Golden Horseshoe 2019 as amended ("Growth Plan") Mr. Stewart referred to policies 2.2.4.3 which is supported the plan development as it will provide for greater than 160 residents and jobs combined per ha for the LRT adjacent location. He also added that the

proposal conforms with policies 3.2.3 and 3.2.4 in the context of moving people and being on a main transit route and a possible future designation for major transit station area.

[65] Mr. Stewart also reviewed conformity with the Regional Official Plan and gave evidence that the proposal is specifically supportive of the transit oriented policies in these plans. He added that it also conforms to the appropriate noise guidelines and considerations as an appropriate Class 4 based residential development.

[66] Mr. Stewart also reviewed the Kitchener Official Plan and stated that the proposal is supportive of the interconnection to transit services with the LRT and the GRT.

[67] Mr. Stewart addressed concerns raised by participants and demonstrated that the siting of towers and the associated shadow studies indicate that their concerns have been duly addressed.

[68] Overall, Mr. Stewart concluded that the proposal represents good land use planning and is in public interest.

[69] In contrast, Mr. John-Baptiste failed to establish any policy basis for his opinions that the development was incompatible with railyard or railway corridor operations. To re-iterate, in examinations he agreed that the policies allow such developments if suitable and appropriate mitigation measures can be implemented. He agreed that such developments are in place along many railway corridors and different places classified as railyards and railway corridors albeit with differences in operations.

[70] Therefore, the Tribunal prefers the evidence of Mr. Stewart and his opinion that the development is possible and allowed within the context of all prevailing planning

policies framework if suitable mitigation or other actions recommended by the Applicant/Appellant experts are duly considered and implemented as appropriate.

CONCLUSIONS

[71] The Tribunal based on review of all evidence before it makes the following determination regarding the key issues;

- a) The proposed development has no impact on CN railyard operations; and
- b) CN railyard operation has impacts upon the proposed development, but all of these have been suitably considered by the Applicant/Appellant for mitigation or management as required by the guiding standards and industry good practices.

[72] The Tribunal based on all the land use planning evidence before it determines that the OPA and the ZBA have, as appropriate, regard for provincial interest, are consistent with PPS 2020, conform to the Growth Plan, conform to the City and the Region's Official Plans and are otherwise consistent with the same.

[73] The OPA and ZBA represent good land use planning and are in public interest.

ORDER

[74] The Tribunal orders that the OPA appeal is allowed and the Amendment to the Official Plan of the City of Kitchener is approved per Attachment 1.

[75] The ZBA appeal is allowed and By-law No. 85-1 of the City of Kitchener is amended as per Attachment 2.

Jatinder Bhullar

JATINDER BHULLAR
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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ATTACHMENT 1

AMENDMENT NO. ____ TO THE OFFICIAL PLAN
OF THE CITY OF KITCHENER

CITY OF KITCHENER

Block Line and Courtland Avenue East

AMENDMENT NO. ____ TO THE OFFICIAL PLAN
OF THE CITY OF KITCHENER

CITY OF KITCHENER
Block Line and Courtland Avenue East

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SECTION 1 – TITLE AND COMPONENTS

This amendment shall be referred to as Amendment No. ____ to the Official Plan of the City of Kitchener. This amendment is comprised of Sections 1 to 4 inclusive.

SECTION 2 – PURPOSE OF THE AMENDMENT

The purpose of the Official Plan Amendment is change the land use designation and amend Map 3 as well as to add a site specific policy area and amend Map 5 to permit the development of the subject lands with a new comprehensively planned mixed-use development which features four residential towers ranging from 26 to 35 storeys with approximately 1300 dwelling units, up to 20,000 square metres of transit-oriented non-residential uses at the ground and lower levels, 3 levels of below grade parking with approximately 1500 parking spaces, private roads, below grade loading areas and public transit facilities, and a large publicly accessible ground level pedestrian plaza.

The amendment comprises of the following changes:

- Map 3 is amended by changing the land use designation from General Industrial Employment and from Natural Heritage Conservation to Mixed Use,
- Map 5 is amended by adding Specific Policy Area 38,
- Adding Policy 15.D.12.38 to Section 15.D.12 to permit a maximum Floor Space Ratio of 8.5:
 - Specific Policy 15.D.12.38 amends Policy 15.D.4.17c in the Mixed Use land use designation to permit a maximum Floor Space Ratio of 8.5.

SECTION 3 – BASIS OF THE AMENDMENT

City of Kitchener Official Plan

The subject lands are currently designated as General Industrial Employment in the 2014 Official Plan. The current General Industrial land use designation from the 1994 plan was brought forward into the 2014 plan as General Industrial Employment. The existing Secondary Plans were not reviewed as part of the 2014 Plan as station area planning exercises were contemplated for large portions of the Secondary Plan areas.

While the subject lands are not within a Secondary Plan area, they were identified as a Major Transit Station Area intensification area in the City's urban structure. Major Transit Station Area Intensification Areas are planned to accommodate growth through development to support existing and planned transit and rapid transit service levels, while preserving stable residential neighbourhoods which are not the primary focus for intensification.

Until such time as station area planning exercises are completed, the City has completed Phase 1 of the Planning Around Rapid Transit Station Areas (PARTS) Project to identify Major Transit Station Study Areas including the preliminary identification of areas, based on a high level of technical analysis, in which to focus intensification in and which could support transit-oriented and transit-supportive development and redevelopment.

For lands designated as Mixed Use, the permitted residential uses include medium and high rise residential uses permitted in the Medium Rise Residential and High Rise Residential land use designations, including multiple dwellings. Permitted non-residential uses include compatible

commercial uses such as, but not limited to, retail, commercial entertainment, restaurants, financial establishments, personal services, office, health-related uses such as health offices and health clinics and institutional uses such as daycare facilities, religious institutions, and educational establishments but not including elementary schools, social service establishment, and studio and artisan-related uses.

This amendment will also extend the permissions for the subject lands, within a Major Transit Station Areas (MTSAs), to consider additional density, with additional permissions for Floor Space Ratio, in exchange for community benefits.

The Comprehensive Review of Employment Lands study (CREL) satisfied the requirement for a provincially mandated municipal comprehensive review of the City of Kitchener's employment lands (industrial lands) to ensure that the City has sufficient lands to meet long term industrial employment needs, to protect prime industrial employment lands and to identify industrial employment lands that are suitable for conversion to other employment uses and non-employment uses. The Official Plan permits land use designation change to other non-industrial employment uses within MTSAs without the requirement for a municipal comprehensive review provided the proposal is in accordance with the Transit-Oriented Development Policies in the Section 13.C.3.

The proposed amendment is consistent with Section 13.C.3.12 of the Official Plan. The development of the subject lands with a mixed-use development that is in a compact form with uses and residential densities that are transit supportive. The Block Line ION station stop is immediately adjacent to the lands, and the site is being designed to function as a transfer area for users between ION and bus public transportation systems. The proposed development, in the form of mixed use buildings featuring underground parking, non-residential uses on the lower floors and residential dwellings in the upper floors, is a design that is appropriate for a MTSA.

Regional Official Plan

Urban Area policies in the Regional Official Plan (ROP) identify that the focus of the Region's future growth will be within the urban areas of the Cities of Cambridge, Kitchener and Waterloo. This area contains the physical infrastructure and community infrastructure to support major growth, including transportation networks, municipal drinking-water supply systems and municipal wastewater systems, and a broad range of social and public health services. It is also well-served by the existing Regional transit system. For these reasons, lands within the Urban Area have the greatest capacity to accommodate growth and serve as the primary focus for employment, housing, cultural and recreational opportunities in the region. Most of the Region's future growth is expected the Urban Area within urban growth centres, major transit station areas, reurbanization corridors, major local nodes and urban designated greenfield areas. Many of the policies contained in the ROP are grounded in the principles of transit oriented development which is characterized by a mix of medium to high density land uses located within an easy walking distance of a major transit station area or higher frequency transit stop. The built form is specifically designed to integrate with transit and which facilitate walking and transit use for everyday activities.

Community Building Strategy

The Community Building Strategy (CBS) was prepared by the Region and adopted by Waterloo Regional Council and provides an overall framework and vision for the entire Central Transit Corridor (CTC), including the Block Line station area. The CBS is a Region-wide visioning document prepared to assist the community and local planning authorities with station area planning exercises. The CBS identifies the Block Line Station Area as surrounded by residential neighbourhoods including a community facility cluster.

The CBS identifies the main use of the Block Line station area to be; a major transfer point between the ION rapid transit and higher frequency transit services serving the western half of Kitchener and Waterloo, a neighbourhood access point, and as an access point to the recreational facilities and St Mary's High School. The CBS notes that the character of existing stable neighbourhoods should be preserved and areas of undeveloped land adjacent to the west of station stop may be redeveloped for commercial and neighbourhood retail uses, ideally well integrated with transit service.

The CBS also identifies the potential built form and land uses for the Block Line station area. The main area of change along Courtland Avenue East was identified as an appropriate location for a mix of building types ranging from mid-rise residential and/or office development with retail at street level on Courtland Avenue East to high rise residential development on mid-rise bases/podiums west of Courtland. The CBS states that the tallest buildings should be located to the west of Courtland Avenue East across from the shopping mall and plaza and opportunities to integrate new development west of Courtland Avenue East with the LRT station and bus terminal should be explored. Development adjacent to the Block Line ION station stop should be situated to facilitate direct connections between ION and bus services.

Provincial Policy Statement (PPS), 2020

The PPS recognizes that the wise management of land use change may involve directing, promoting or sustaining development. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety. The PPS encourages Planning authorities to permit and facilitate a range of housing options, including new development as well as residential intensification, to respond to current and future needs.

In Section 1.2.6, the PPS provides direction for land use compatibility. The PPS requires that sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures. Where avoidance is not possible, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:

- a) there is an identified need for the proposed use;
- b) alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
- c) adverse effects to the proposed sensitive land use are minimized and mitigated; and
- d) potential impacts to industrial, manufacturing or other uses are minimized and mitigated.

Planning for land uses in the vicinity of rail facilities shall be undertaken so that their long-term operation and economic role is protected, and that rail facilities and sensitive land uses are appropriately designed, buffered and/or separated from each other.

The Official Plan supports mixed uses developments that make efficient use of land and provide an appropriate affordable and market-based range and mix of residential types. The PPS promotes the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs, and development and land use patterns that conserve biodiversity and prepare for the impacts of a changing climate.

The City's Urban Structure identified a range of intensification areas throughout the City. The subject lands are an appropriate location for increased density, being within a MTSA, immediately adjacent to an ION rapid transit station stop, and outside of the stable low rise neighbourhood. The PPS also requires that Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents of the regional market area. This is accomplished by permitting and facilitating all housing options required to meet the social, health, economic and well-being requirements of current and future residents. For existing communities, this is achieved by introducing new forms of housing with compatible new development.

The site specific zoning by-law will restrict sensitive land uses until such time as a detailed noise and vibration studies are completed to determine appropriate measures required to ensure that the proposed development, and proposed uses, will be designed and constructed to minimize and mitigate adverse effects from adjacent noise and vibration sources, including road/rail noise and vibration. The proposed development will have to be designed and constructed to minimize and mitigate impacts to/from the adjacent railyard, to ensure the long-term function of the rail facility.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (Growth Plan)

Part of the Vision of the Greater Golden Horseshoe (GGH) is to have sufficient housing supply that reflects market demand and what is needed in local communities. Two of the Guiding Principles of the Growth Plan are to prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability and to support a range and mix of housing options, including second units and affordable housing, to serve all sizes, incomes, and ages of households.

The Growth Plan requires a minimum of 50 per cent of all residential development occurring annually within the Region of Waterloo to be within the delineated Built-Up Area. Municipalities must support housing choice through the achievement of the minimum intensification and density targets by identifying a diverse range and mix of housing options and densities, including second units and affordable housing to meet projected needs of current and future residents.

The Growth Plan prioritizes planning for Major Transit Station Areas (MTSAs), including implementing zoning in a manner that implements the Growth Plan. MTSAs are generally defined as the area within an approximate 500 to 800 metre radius of a transit station, representing about a 10-minute walk. MTSAs served by light rail transit will be planned for a minimum density target of 160 residents and jobs combined per hectare. All MTSAs will be planned and designed to be transit supportive and to achieve multimodal access to stations and connections to nearby major trip generators by providing connections to local and regional transit services to support transit service integration.

Within all MTSAs, development will be supported, where appropriate, by:

- a) planning for a diverse mix of uses, including second units and affordable housing, to support existing and planned transit service levels;
- b) fostering collaboration between public and private sectors, such as joint development projects;
- c) providing alternative development standards, such as reduced parking standards; and
- d) prohibiting land uses and built form that would adversely affect the achievement of transit-supportive densities.

Lands adjacent to or near to existing and planned frequent transit should be planned to be transit-supportive and supportive of active transportation and a range and mix of uses and activities.

The development of the subject lands with a more intense residential use within the City's delineated Built-Up Area, represent intensification and will help the City to meet density targets. MTSAs are

planned to accommodate additional housing opportunities that will make use of existing infrastructure and support the viability of existing transit. Housing policies of the Growth Plan support the development of a range and mix of housing options that serves the needs of a variety of household sizes, incomes and ages. The proposed amendment will accommodate a significant infill development that will help to achieve transit support densities while preserving the adjacent stable low rise neighbourhoods which are not identified in the Official Plan or PARTS to accommodate a significant increase in density.

SECTION 4 – THE AMENDMENT

1. The City of Kitchener Official Plan is hereby amended as follows:

- I. Part D, Section 15.D.12 is amended by adding Site Specific Policy Area 15.D.12.38 as follows:

“15.D.12.38. Block Line Road and Courtland Avenue East

- a) Notwithstanding the Mixed Use land use designation and policies, on lands legally described as Plan 1206 Pt Blk F Plan 1221 Pt Blk F RP 58R-12301 PART 1, the *Floor Space Ratio* may be increased to a maximum of 8.5, in exchange for the provision of community benefits. Further, the maximum FSR and the value of the community benefits may be regulated further in the City’s Zoning By-law. Some portions of land within the boundary of this Special Policy Area may be zoned to permit a lower maximum FSR.”
- b) i. That the subject lands be designated as a Class 4 Noise Area pursuant to the Ministry of the Environment, Conservation and Parks Publication NPC-300 Environmental Noise Guideline – Stationary and Transportation Sources – Approval and Planning. For the purpose of Stationary Noise Assessment (Steady and Impulsive), the following uses shall include receptor-based mitigation measures, where required:

Day Care facility
Duplex Dwelling
Dwelling Unit
Educational Establishment
Health Clinic
Health Office
Hospice
Hotel
Lodging House having 9 residents or more
Medical Laboratory
Multiple Dwelling
Religious Institution
Residential Care Facility
Single Detached Dwelling
Street Townhouse Dwelling
Tourist Home

- ii. Notwithstanding the Class 4 Area classification, any daycare use shall satisfy the Environmental Noise Guideline NPC-300 Class 1 area acoustical environment noise level objectives.
- c)
 - i. A Holding Provision shall be applied to the subject lands in the site specific zoning with regards to the use of geothermal energy systems.
 - ii. Prior to passing of a by-law to remove the holding (H) symbol, the owner of the lands shall submit any required technical study(ies), to the satisfaction of the Region of Waterloo, to evaluate the use of geothermal energy systems in accordance with Policy 8.A.4. of the Regional Official Plan.
- d)
 - i. A Holding Provision shall be applied to the subject lands in the site specific zoning with regards to *sensitive land uses*, as defined in this Plan.
 - ii. Prior to passing of a by-law to remove the holding (H) symbol, the owner of the lands shall submit any required technical study(ies), plans, reports, and/or drawings, to address land use compatibility and railway safety with the adjacent railway and rail yard use, prior to final site plan approval, to the satisfaction of the City of Kitchener and Region of Waterloo.”

II. Amending Map No. 3 – Land Use by:

- i) Designating the subject lands “Mixed Use” instead of “General Industrial Employment” and “Natural Heritage Conversation”, as shown on the attached Schedule ‘A’.

III. Amending Map No. 5 – Specific Policy Areas by:













- i) Adding Specific Policy Area 38 to the subject lands as shown on the attached Schedule ‘B’.

Approved by Local Planning Appeal Tribunal on the _____ of _____, 2020.
 OMB Case No.: PL190267
 OMB File No.: PL190267

**CITY OF KITCHENER
OFFICIAL PLAN
AMENDMENT TO MAP 3
LAND USE**



Legend

-  Low Rise Residential
-  Medium Rise Residential
-  High Rise Residential
-  Mixed Use
-  Commercial
-  Heavy Industrial Employment
-  General Industrial Employment
-  Institutional
-  Natural Heritage Conservation
-  Open Space
-  Area of Amendment
From General Industrial Employment
To Mixed Use
-  Area of Amendment
From Natural Heritage Conservation
To Mixed Use



SCHEDULE 'A'

APPLICANT: 2289238 ONTARIO INC.

COURTLAND AVE E



SCALE 1:7,000

DATE: JULY 31, 2020

REVISED:

OFFICIAL PLAN AMENDMENT OPA17/001/C/GS

ZONING BY-LAW AMENDMENT ZBA17/0005/C/GS

City of Kitchener

DEVELOPMENT SERVICES DEPARTMENT, PLANNING




FILE:
OP17001CGS_SchA
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**CITY OF KITCHENER
OFFICIAL PLAN
AMENDMENT TO MAP 5
SPECIFIC POLICY AREAS**





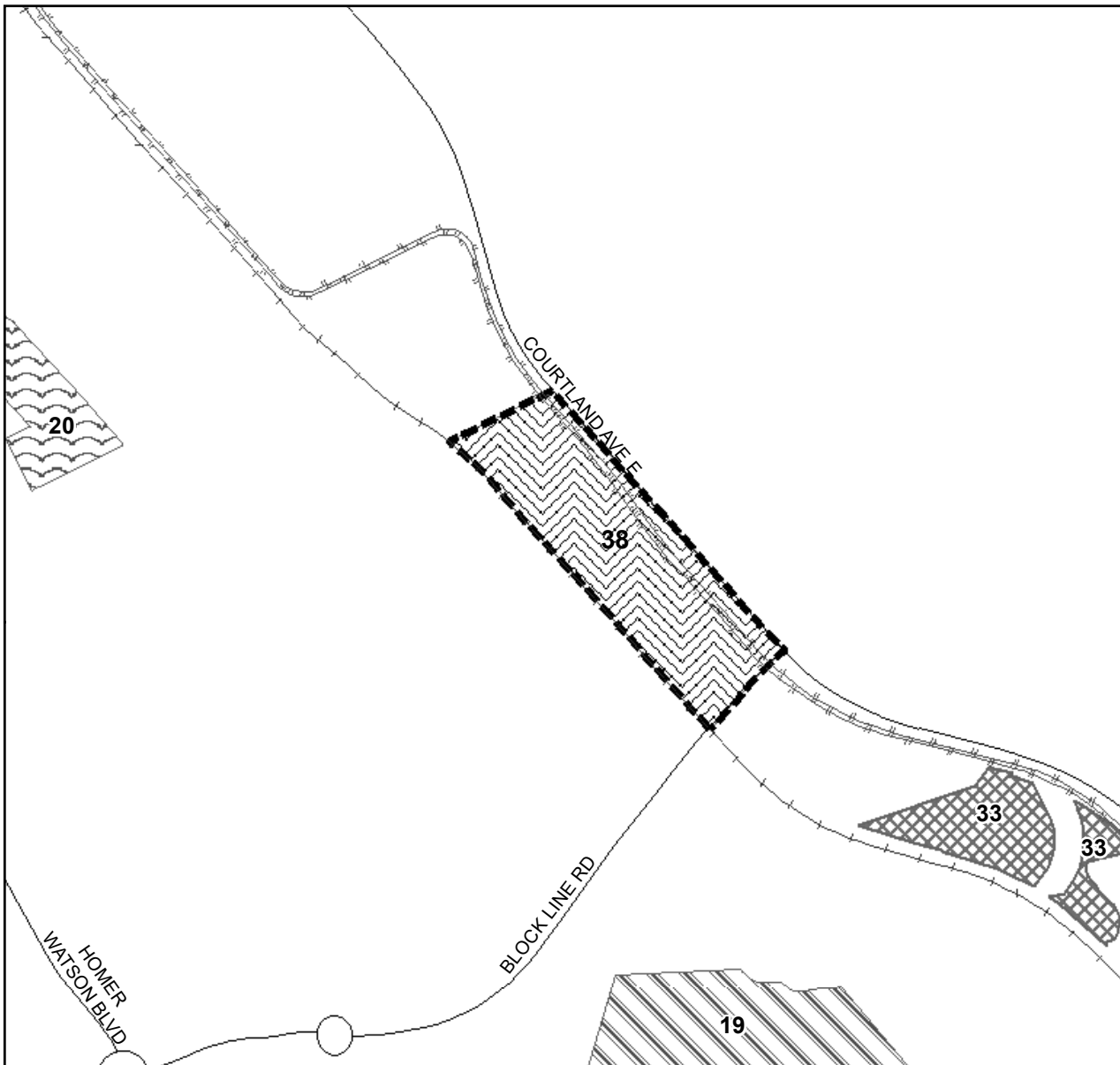
Legend

Specific Policy Areas

-  19. Fallowfield Dr
-  20. 65 Hanson Ave and 300 Ardelt Ave
-  33. 1215 and 1225 Courtland Ave E

Area of Amendment

-  To Add Specific Policy Area
-  38. Block Line Rd and Courtland Ave E



SCHEDULE 'B'

APPLICANT: 2289238 ONTARIO INC.

COURTLAND AVE E



METRES

SCALE 1:7,000

DATE: JULY 31, 2020

REVISED:

OFFICIAL PLAN AMENDMENT OPA17/001/C/GS

ZONING BY-LAW AMENDMENT ZBA17/005/C/GS

City of Kitchener

DEVELOPMENT SERVICES DEPARTMENT, PLANNING

FILE:
OP17001CGS_SchB
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ATTACHMENT 2

BY-LAW NUMBER _____
OF THE
CORPORATION OF THE CITY OF KITCHENER
(Being a by-law to amend By-law 85-1, as amended, known as
the Zoning By-law for the City of Kitchener
– 2289238 Ontario Inc.
– Block Line Road and Courtland Avenue East)

WHEREAS it is deemed expedient to amend By-law 85-1 for the lands specified above;

NOW THEREFORE the Council of the Corporation of the City of Kitchener enacts as follows:

1. Schedule Numbers 170 and 171 of Appendix "A" to By-law Number 85-1 are hereby amended by changing the zoning applicable to the parcel of land specified and illustrated as Area 1 on Map No. 1, in the City of Kitchener, attached hereto, from General Industrial Zone (M-2) to High Intensity Mixed Use Corridor Zone (MU-3) with Special Regulation Provisions 705R and 706R and Holding Provisions 88H and 89H.
2. Schedule Numbers 170 and 171 of Appendix "A" to By-law Number 85-1 are hereby amended by changing the zoning applicable to the parcel of land specified and illustrated as Area 2 on Map No. 1, in the City of Kitchener, attached hereto, from General Industrial Zone (M-2) to High Intensity Mixed Use Corridor Zone (MU-3) with Special Regulation Provisions 705R and 707R and Holding Provisions 88H and 89H.
3. Schedule Number 171 of Appendix "A" to By-law Number 85-1 is hereby amended by changing the zoning applicable to the parcel of land specified and illustrated as Area 3 on Map No. 1, in the City of Kitchener, attached hereto, from General Industrial Zone (M-2) to High Intensity Mixed Use Corridor Zone (MU-3) with Special Regulation Provisions 705R and 708R and Holding Provisions 88H and 89H.
4. Schedule Number 170 of Appendix "A" to By-law Number 85-1 is hereby amended by changing the zoning applicable to the parcel of land specified and illustrated as Area 4 on Map No. 1, in the City of Kitchener, attached hereto, from General Industrial Zone (M-2) to High Intensity Mixed Use Corridor Zone (MU-3) Special Regulation Provisions 705R and 709R and Holding Provisions 88H and 89H.

5. Schedule Numbers 170 and 171 of Appendix "A" to By-law Number 85-1 are hereby further amended by incorporating additional zone boundaries as shown on Map No. 1 attached hereto.
6. Appendix "D" to By-law 85-1 is hereby amended by adding Section 705 thereto as follows:

"705. Notwithstanding Sections 4, 5.19, 5.20, 5.23, 6.1.1.1.d), 6.1.2a), 6.1.2b), 6.1.2d), and 55.2 of this By-law, within the lands zoned High Intensity Mixed Use Corridor Zone (MU-3), shown as affected by this subsection, on Schedules 170 and 171 of Appendix "A", a mixed-use development shall be permitted in accordance with the following:

- a. Off-Street Parking shall be required as follows:
 - i. A minimum of 0.95 vehicle parking space per dwelling unit, of which no more than 10% shall be a shared residential and non-residential parking space,
 - ii. A minimum of 0.05 vehicle visitor parking spaces per dwelling unit,
 - iii. A minimum of 0.05 vehicle visitor parking spaces per dwelling unit, which may be shared and included as part of the required specific non-residential parking space,
 - iii. A minimum of 1 vehicle parking spaces for specific non-residential uses per 50 square metres of GFA devoted to a specific non-residential use, to a maximum of 330 spaces, for a maximum of up to 20,000 square metres of specific non-residential GFA, is required for all specific non-residential uses that are located in a mixed use building(s).
- b. For the purpose of subsection a. of this regulation above, *specific non-residential uses* include Artisan's Establishment, Canine or Feline Grooming, Craftsman Shop, Day Care Facility, Health Clinic, Health Office, Museum, Office, Personal Services, Printing Establishment, Repair Service, Retail, Studio, and Veterinary Services.

The parking requirement for any other use, or any specific non-residential use herein which occupies more than a cumulative total of 20,000 square metres of all building(s), shall be in accordance with the parking requirements outlined in Section 6 of this by-law.

- c. A minimum of 1 bicycle parking space, which is either in a building or structure or within a secure area such as a supervised parking lot or enclosure with a secure entrance or within a bicycle locker, per residential dwelling unit for the exclusive use of residential occupants is required.
- d. A minimum of 50 bicycle parking spaces, which are either in a building or structure or within a secure area such as a supervised parking lot or enclosure with a secure entrance or within a bicycle locker which are accessible to the general public, shared by all lands subject to this regulation, is required.
- e. A minimum of 25 bicycle parking spaces, which are located in accessible and highly visible locations near the entrance of a building and are accessible to the general public, are required per lot.
- f. That building floor area which is partially below grade, below the publicly accessible pedestrian plaza level, the permitted uses shall only be vehicle and bicycle parking, loading, storage, public transportation facilities, building utilities, and private roads, and shall not be included in the calculation for Floor Space Ratio (FSR) and all setbacks from all property lines shall be 0.0 metres.
- g. For all lands affected by this subsection, lot lines shall not be construed to be lot lines for the purposes of any zoning regulations except for subsection e. of this regulation above provided that all applicable regulations of this subsection relative to the lands as a whole and its external lot lines are observed.
- h. Notwithstanding Section 5.21 of this By-law, within the lands shown on Schedule Numbers 170 and 171 of Appendix "A", internal lot lines created by registration of a plan of condominium or consent shall not be construed to be lot lines for the purpose of zoning regulations provided that all applicable regulations of this by-law relative to the whole lot and its external lot lines, existing prior to any condominium plan registration or consent are strictly observed.
- i. For the purpose of any site-specific regulation(s) applicable to all lands affected by this subsection:

- i. "Tower" means the middle component of a building, connecting the base to the top and housing the building's primary function.
 - ii. "Base/Podium" means the ground floor and any additional floors with a direct relationship to the pedestrian plaza and public realm. This can include traditional multi-storey podiums, portions of a tower which extend to the ground floor.
- j. The maximum FSR per lot is prescribed in Special Regulations 706, 707, 708, and 709 of Appendix "D" of this By-law. Any FSR greater than 4.0 per lot, is subject to the owner of the site providing community benefits listed hereto.

The following community benefits shall be required for lands illustrated as Areas 1 and 2 on Map No. 1, and may be provided for lands illustrated as Areas 3 and 4 on Map No.1:

- i. The permitted FSR per lot may be increased by 0.5 for every 100 square metres of outdoor amenity areas which are accessible to and equipped for the use by the general public for passive or active recreation or for public gatherings, which may include a publicly accessible plaza. At minimum, a barrier-free pedestrian route that is publicly accessible must be provided between the ION station platform and any public transportation facility, including a bus loading bay.
- ii. The permitted FSR per lot may be increased by 1.5 for the provision of infrastructure, facilities or services required by the Region of Waterloo for public transit, including bus loading bays, dedicated space for regional transit staff office, and/or the provision of parking spots for transit staff.

Only where the community benefits outlined in section i). and ii). above are provided, the following additional community benefits may be provided in exchange for additional FSR.

- iii. The FSR will be proportionally increased in exchange for the provision of dwelling units that meet the definition of affordable, special needs, assisted, or subsidized, in accordance with the following:

- i. By 1.0 FSR for 10% of all dwellings units,
 - ii. By 2.0 FSR for 15% of all dwelling units, and
 - iii. By 3.0 FSR for 20% of all dwelling units.

- iv. The FSR will be proportionally increased in accordance with the following:
 - i. By 0.5 FSR in exchange for one (1) of the community benefits, and
 - ii. By 1.0 FSR in exchange for two (2) of the community benefits listed below:
 - The purchase of a vehicle for car share purposes for a period of not less than 24 months;
 - The provision of transit and active transportation digital displays.

- v. The permitted FSR per lot may be increased by 0.5 for every 100 square metres of floor space dedicated as a facility or space on the ground floor or accessible second storey for a non-profit organization (related to arts, culture, creative industries, community, or institutional uses), for a period of no less than five (5) years.

- vi. The permitted FSR per lot may be increased by 0.5 in exchange for the provision of public art valued at one percent of the value of construction.

- vii. The FSR will be proportionally increased in accordance with the following:
 - i. By 0.25 FSR in exchange for two (2) of the community benefits, and
 - ii. By 0.5 in exchange for three (3) or more of the community benefits listed below:
 - A green or eco roof,
 - A green wall or living wall,
 - Energy conservation glazing of all exterior facing glass that exceeds the minimum requirements of the Ontario Building Code by 25%,

The incorporation of energy or heat reuse/conservation systems,

The incorporation of an exfiltration system,

The incorporation of grey water reuse systems,

On-site stormwater management exceeding the minimum requirements of the City of Kitchener.

- viii. The permitted FSR per lot may be increased by 1.0 for buildings that meet or exceed LEED or other similar rating system level by a certified professional.
- ix. The permitted FSR per lot may be increased by 1.5 for buildings that meet or exceed Passive House standards or similar rating level.
- x. The permitted FSR per lot may be increased by 0.5 for buildings which incorporates renewable energy sources (such as solar, wind, geothermal, or other) into the development and/or is part of a District Energy System.

The increased FSR permissible by this section shall be subject to compliance with the conditions set out in this By-law and the provisions of which shall be secured by a development agreement with the City of Kitchener.

Upon execution and registration of the development agreement with the owner of the site securing the provisions of the facilities, services and matters listed above, the site is subject to the provisions of this By-law, provided that in the event the said agreement requires the provision of a facility, service or matter as a precondition to the issuance of a building permit, the owner may not erect or use such building until the owner has satisfied the said requirements.”

7. Appendix “D” to By-law 85-1 is hereby amended by adding Section 706 thereto as follows:

“706. Notwithstanding Sections 5.23 and 55.2 of this By-law, within the lands zoned High Intensity Mixed Use Corridor Zone (MU-3), shown as affected by this subsection, on Schedules 170 and 171 of Appendix “A”, the following maximum Floor Space Ratio as

well as minimum setbacks and maximum building heights for podiums and towers shall apply:

- a. The maximum Floor Space Ratio, inclusive of bonusing, shall be 7.5.
- b. The maximum Base/Podium height shall be 28.5 metres and eight storeys.
- c. The maximum Tower height shall be 89.5 metres and 27 storeys.
- d. The minimum Base/Podium setback from Courtland Avenue shall be 8.5 metres and the minimum Tower setback from Courtland Avenue shall be 12.0 metres.
- e. The minimum Base/Podium setback from the rail corridor shall be 17.4 metres and the minimum Tower setback from the rail corridor shall be 20.0 metres.
- f. The minimum Base/Podium southerly setback shall be 8.5 metres and the minimum Tower southerly setback shall be 14.0 metres.
- g. The minimum Base/Podium northerly setback shall be 0.0 metres and the minimum Tower northerly setback shall be 21.0 metres.
- h. Dwelling units shall only be located within a mixed use building containing at least one other permitted use, and except for access, shall not be located on the ground or the second floor.”

8. Appendix “D” to By-law 85-1 is hereby amended by adding Section 707 thereto as follows:

“707. Notwithstanding Sections 5.23 and 55.2 of this By-law, within the lands zoned High Intensity Mixed Use Corridor Zone (MU-3), shown as affected by this subsection, on Schedules 170 and 171 of Appendix “A”, the following maximum Floor Space Ratio as well as minimum setbacks and maximum building heights for podiums and towers shall apply:

- a. The maximum Floor Space Ratio, inclusive of bonusing, shall be 8.0.
- b. The maximum Base/Podium height shall be 28.5 metres and eight storeys.
- c. The maximum Tower height shall be 113.5 metres and 35 storeys.
- d. The minimum Base/Podium setback from Courtland Avenue shall be 8.5 metres and the minimum Tower setback from Courtland Avenue shall be 20.0 metres.
- e. The minimum Base/Podium setback from the rail corridor shall be 3.6 metres and the minimum Tower setback from the rail corridor shall be 4.5 metres.
- f. The minimum Base/Podium southerly setback shall be 0.0 metres and the minimum Tower southerly setback shall be 14.0 metres.

- g. The minimum Base/Podium northerly setback shall be 28.0 metres and the minimum Tower northerly setback shall be 35.0 metres.
- h. Dwelling units shall only be located within a mixed use building containing at least one other permitted use, and except for access, shall not be located on the ground or the second floor.”

9. Appendix “D” to By-law 85-1 is hereby amended by adding Section 708 thereto as follows:

“708. Notwithstanding Sections 5.23 and 55.2 of this By-law, within the lands zoned High Intensity Mixed Use Corridor Zone (MU-3), shown as affected by this subsection, on Schedules 170 and 171 of Appendix “A”, the following maximum Floor Space Ratio as well as minimum setbacks and maximum building heights for podiums and towers shall apply:

- a. The maximum Floor Space Ratio, inclusive of bonusing, shall be 8.5.
- b. The maximum Base/Podium height shall be 28.5 metres and eight storeys.
- c. The maximum Tower height shall be 104.5 metres and 32 storeys.
- d. The minimum Base/Podium setback from Courtland Avenue shall be 8.5 metres and the minimum Tower setback from Courtland Avenue shall be 14.0 metres.
- e. The minimum Base/Podium setback from the rail corridor shall be 3.6 metres and the minimum Tower setback from the rail corridor shall be 20.0 metres.
- f. The minimum Base/Podium southerly setback shall be 3.6 metres and the minimum Tower southerly setback shall be 10.0 metres.
- g. The minimum Base/Podium northerly setback shall be 0.0 metres and the minimum Tower northerly setback shall be 16.0 metres.
- h. Dwelling units shall only be located within a mixed use building containing at least one other permitted use, and except for access, shall not be located on the ground or the second floor.”

10. Appendix “D” to By-law 85-1 is hereby amended by adding Section 709 thereto as follows:

“709. Notwithstanding Sections 5.23 and 55.2 of this By-law, within the lands zoned High Intensity Mixed Use Corridor Zone (MU-3), shown as affected by this subsection, on Schedules 170 and 171 of Appendix “A”, the following maximum Floor Space Ratio as well as minimum setbacks and maximum building heights for podiums and towers shall apply:

- a. The maximum Floor Space Ratio, inclusive of bonusing, shall be 6.0.
- b. The maximum Base/Podium height shall be 28.5 metres and eight storeys.
- c. The maximum Tower height shall be 86.5 metres and 26 storeys.
- d. The minimum Base/Podium setback from Courtland Avenue shall be 7.5 metres and the minimum Tower setback from Courtland Avenue shall be 18.0 metres.
- e. The minimum Base/Podium setback from the rail corridor shall be 3.6 metres and the minimum Tower setback from the rail corridor shall be 4.5 metres.
- f. The minimum Base/Podium southerly setback shall be 0.0 metres and the minimum Tower southerly setback shall be 16.0 metres.
- g. The minimum Base/Podium northerly setback shall be 8.0 metres and the minimum Tower northerly setback shall be 19.0 metres.
- h. Dwelling units shall only be located within a mixed use building containing at least one other permitted use, and except for access, shall not be located on the ground or the second floor.”

11. Appendix “F” to By-law 85-1 is hereby amended by adding Section 88 thereto as follows:

- “88. For lands zoned MU-3 as shown on Schedules 170 and 171 of Appendix ‘A’, as affected by this section and subject to a Holding Provision “H”, the use of geothermal energy systems shall not be permitted until the Holding Provision “H” is removed in whole or in part, by By-law and until;
- i. The City of Kitchener receives acknowledgment from the Regional Municipality of Waterloo advising of the approval of any technical studies in support of the use of geothermal energy systems on the property.
 - ii. The Owner enters into appropriate Development Agreements with the Regional Municipality of Waterloo to provide for the implementation of the acknowledged and/or approved technical studies related to the use of geothermal energy systems.”

12. Appendix “F” to By-law 85-1 is hereby amended by adding Section 89 thereto as follows:

- “89. Since the lands are classified as a Class 4 Area as defined in the Ministry of the Environment Conservation and Parks Noise Guideline NPC-300, notwithstanding Sections 55.1 of this By-law, for lands zoned MU-3 as shown on Schedules 170 and

171 of Appendix 'A', as affected by this section and subject to a Holding Provision "H", the following sensitive uses;

- Day Care facility
- Duplex Dwelling
- Dwelling Unit
- Educational Establishment
- Health Clinic
- Health Office
- Hospice
- Hotel
- Lodging House having 9 residents or more
- Medical Laboratory
- Multiple Dwelling
- Religious Institution
- Residential Care Facility
- Single Detached Dwelling
- Street Townhouse Dwelling
- Tourist Home

shall not be permitted until this Holding Provision has been removed by By-law. The holding symbol shall not be removed, in whole or in part, until:

- i. That the City of Kitchener has received acknowledgment from the Regional Municipality of Waterloo advising that road/rail traffic and stationary noise studies have been approved in accordance with the all relevant legislation and Ministry of the Environment, Conservation and Parks, and Regional guidelines. The indoor sound criteria for stationary and impulsive noise shall be 40 dBA (dBAI) during the daytime period (07:00 - 23:00) and 35 dBA (dBAI) during the nighttime period (23:00 - 07:00) for indoor sensitive spaces with windows and doors closed. The criteria shall be used to assist and guide mitigation design only, to the satisfaction of the City of Kitchener and the Regional Municipality of Waterloo. Further, all exterior walls directly exposed to railway line and noise sources in the rail yard shall be constructed with brick veneer or masonry equivalent, satisfactory to the City of Kitchener and the Regional Municipality of Waterloo.

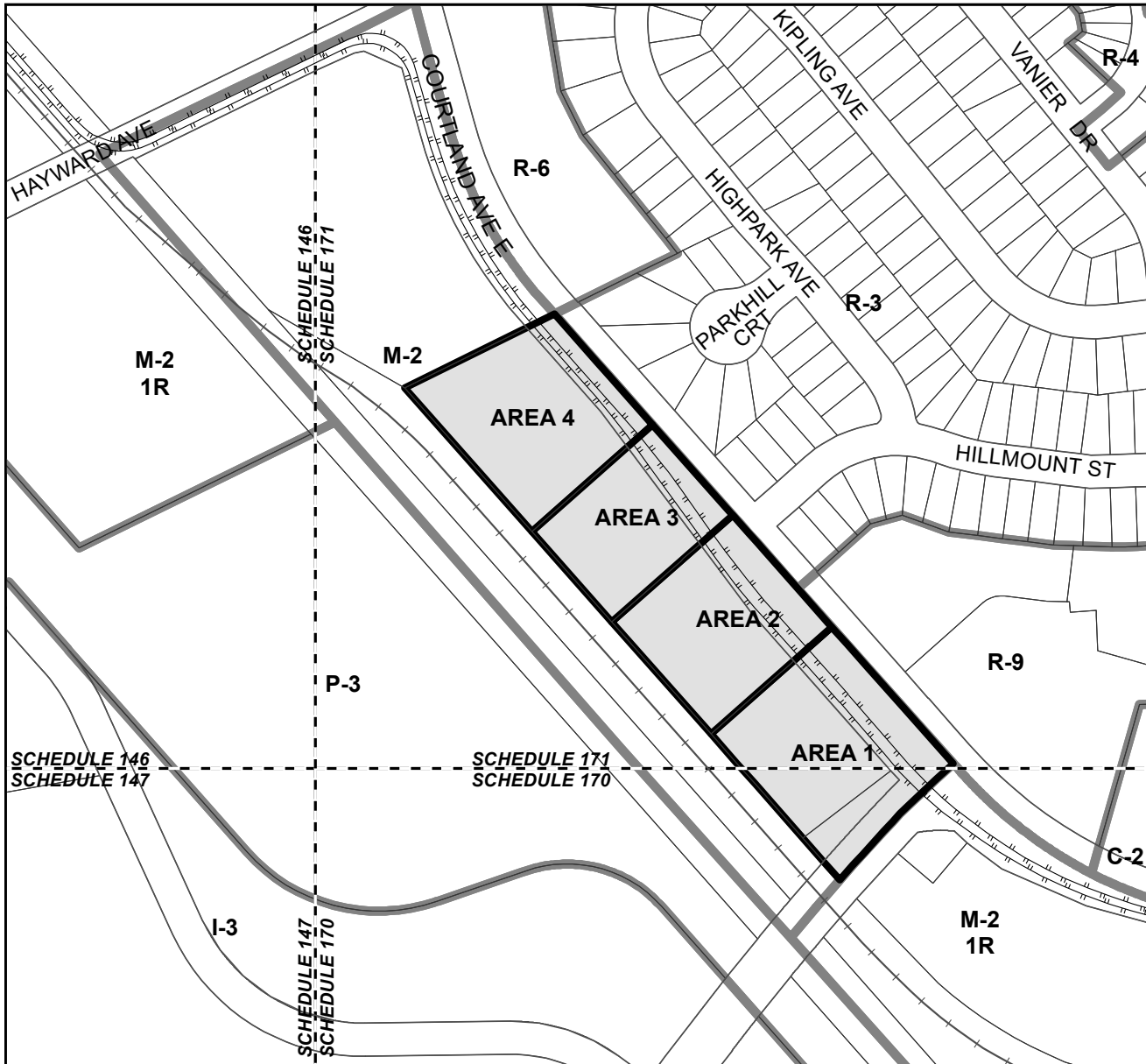
- ii. Any window design or on building mitigation tool other than an Enclosed Noise Buffer for mitigation must be considered an appropriate tool to the satisfaction of the Regional Municipality of Waterloo.
- iii. Notwithstanding i. above in this subsection, any Day Care Facility shall be limited to the Courtland Avenue side of the site only, and shall satisfy the Class 1 Area acoustical environment sound level criteria of the Ministry of the Environment, Conservation and Parks NPC-300 noise guideline, to the satisfaction of the City of Kitchener and the Region of Waterloo.
- iv. That the City of Kitchener has received a detailed vibration study in accordance with the relevant legislation and the Federation of Canadian Municipalities / Railway Association of Canada “Proximity” guidelines, satisfactory to the City of Kitchener and the Regional Municipality of Waterloo.
- v. That the City of Kitchener has received the required technical reports to address railway health and safety as per conclusions and recommendations of the “Development Viability Assessment of Virerra Village, Final Report” (Dillon Consulting, July 2019), satisfactory to the City of Kitchener and the Regional Municipality of Waterloo.
- vi. That the City of Kitchener has received a detailed dust and odour study in accordance with the relevant legislation, satisfactory to the City of Kitchener and the Regional Municipality of Waterloo.

13. This By-law shall become effective only if Official Plan Amendment No. ____, Block Line and Courtland comes into effect, pursuant to Section 24(2) of The Planning Act, R.S.O. 1990, c. P.13, as amended.

Approved by Local Planning Appeal Tribunal on the ____ of _____, 2020.

LPAT Case No.: PL190267

LPAT File No.: PL190267



SUBJECT AREAS



AREA 1 - FROM GENERAL INDUSTRIAL ZONE (M-2) TO HIGH INTENSITY MIXED USE CORRIDOR ZONE (MU-3) WITH SPECIAL REGULATION PROVISIONS 705R AND 706R AND HOLDING PROVISIONS 88H AND 89H

AREA 2 - FROM GENERAL INDUSTRIAL ZONE (M-2) TO HIGH INTENSITY MIXED USE CORRIDOR ZONE (MU-3) WITH SPECIAL REGULATION PROVISIONS 705R AND 707R AND HOLDING PROVISIONS 88H AND 89H

AREA 3 - FROM GENERAL INDUSTRIAL ZONE (M-2) TO HIGH INTENSITY MIXED USE CORRIDOR ZONE (MU-3) WITH SPECIAL REGULATION PROVISIONS 705R AND 708R AND HOLDING PROVISIONS 88H AND 89H

AREA 4 - FROM GENERAL INDUSTRIAL ZONE (M-2) TO HIGH INTENSITY MIXED USE CORRIDOR ZONE (MU-3) WITH SPECIAL REGULATION PROVISIONS 705R AND 709R AND HOLDING PROVISIONS 88H AND 89H

ZONE GRID REFERENCE
 SCHEDULE NO. 170 AND 171
 OF APPENDIX 'A'
 KITCHENER ZONING BY-LAW 85-1

- C-2 NEIGHBOURHOOD SHOPPING CENTRE ZONE
- I-3 MAJOR INSTITUTIONAL ZONE
- M-2 GENERAL INDUSTRIAL ZONE
- P-3 HAZARD LAND ZONE
- R-3 RESIDENTIAL THREE ZONE
- R-4 RESIDENTIAL FOUR ZONE
- R-6 RESIDENTIAL SIX ZONE
- R-9 RESIDENTIAL NINE ZONE
- MU-3 HIGH INTENSITY MIXED USE CORRIDOR ZONE

— ZONE LIMITS



<p>MAP NO. 1</p> <p>2289238 ONTARIO INC</p> <p>COURTLAND AVE E</p>		<p>SCALE 1:4,000</p> <p>DATE: OCTOBER 6, 2020</p>	<p>ZONING BY-LAW AMENDMENT ZBA17/005/C/GS</p> <p>OFFICIAL PLAN AMENDMENT OPA17/001/C/GS</p>	
			<p>City of Kitchener</p> <p>DEVELOPMENT SERVICES DEPARTMENT, PLANNING</p>	