

CASE NO.: OLT-21-001631

ONTARIO LAND TRIBUNAL

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O.

Applicant and Appellant:	Burgess Heritage Group Inc.
Subject:	Request to amend the Official Plan - Failure of Town of Grimsby to adopt the requested amendment
Existing Designation:	Neighbourhood Commercial Areas
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit a 5-storey mixed use building
Property Address/Description:	133 and 137 Main Street East
Municipality:	Town of Grimsby
Approval Authority File No.:	26O-16-1901
OLT Case No.:	OLT-21-001631
Legacy Case No.:	PL200201
OLT Lead Case No.:	OLT-21-001631
Legacy Lead Case No.:	PL200201
OLT Case Name:	Burgess Heritage Group Inc. v. Grimsby (Town)

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

Applicant and Appellant:	Burgess Heritage Group Inc.
Subject:	Application to amend Zoning By-law No. 14-45 - Refusal or neglect of Town of Grimsby to make a decision
Existing Zoning:	Neighbourhood Commercial
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 5-storey mixed use building
Property Address/Description:	133 and 137 Main Street East
Municipality:	Town of Grimsby
Municipality File No.:	26Z-16-1904
OLT Case No.:	OLT-21-001632
Legacy Case No.:	PL200202
OLT Lead Case No.:	OLT-21-001631
Legacy Lead Case No.:	PL200201

WITNESS STATEMENT OF CATHERINE JAY, BLA, CSLA, OALA, MCIP, RPP

I. QUALIFICATIONS

1. I am a landscape architect, urban designer, professional planner and Principal, Head of Urban Design of SGL Planning and Design Inc. ("SGL"). I have a Bachelor of Landscape Architecture from the School of Environmental Design and Rural Development from the University of Guelph. I am a full member of the Canadian Society of Landscape Architects, a full member of the Ontario Association of Landscape Architects, a Landscape Architect with seal, a full member of the Canadian Institute of Planners and a Registered Planner of Ontario. I have 25 years of experience, including 20 years in the public sector, in urban design, landscape architecture and planning in Ontario.

2. As a registered planner my role is to look at a 25 year horizon to help communities decide how best to use their land and resources with a focus on where people will live work and play in their communities. As a landscape architect I combine art and science to design attractive and functional outdoor spaces to be used by the public and help implement the community's vision. As an urban designer I create a vision for an area and then help bring that vision to life, dealing with the design and management of public places and spaces marrying together the land-use planning and the vision for the area.

3. SGL is a planning consulting firm offering land use planning, land development, urban design and landscape architectural services throughout Ontario. My professional experience focuses on urban design, landscape architecture, planning, as well as development applications. I work for a broad range of municipal and private sector clients and have been involved in a wide array of projects and planning studies, with a particular focus on urban design guidelines, design briefs, landscape plans, community master plans, secondary plans, development and project management across Southern Ontario. I am also a mentor for OPPI Provincial Members and an OALA Professional Development Reviewer. A copy of my Curriculum Vitae is attached to this Witness Statement as **Appendix 1**.

4. I signed the OLT's Expert Duty Form and understand my obligations to the Ontario Planning Land Tribunal by doing so. My signed Expert Duty Form is attached to this Witness Statement as **Appendix 2**.

II. RETAINER & PRELIMINARY WORK UNDERTAKEN

5. I have worked for the Town of Grimsby (the "Town") on various peer reviews since 2018. In June 2022 I was retained to review the applications for submitted Official Plan Amendment File 26O-16-1901 and Zoning By-Law Amendment 26Z-16-1904 for 133 and 137 Main Street East (the "Site") submitted by IBI on behalf of Desantis Homes.

6. On September 6, 2022, I conducted my most recent site visit to take photographs and to further review the Site and surrounding context and character of the area.

7. I have reviewed and considered the following documents in the preparation of this witness statement:

- Town of Grimsby Official Plan ("Official Plan")
- Region of Niagara Official Plan

- The Regional Municipality of Niagara Model Urban Design Guidelines, prepared by Brook McIlroy Planning + Urban Design in association with: ECD Environment Canada Hynde Paul & Associates Macaulay Shiomi Howson Ltd.
- Planning Justification Report, 133-137 Main Street East, Grimsby, prepared by IBI Group dated June 2019 (“PJR”)
- Urban Design Brief, 133-137 Main Street E, Grimsby, Ontario, prepared by IBI Group, dated July 2019 (“UBD”)
- Preliminary Site plan prepared by IBI Group, dated August 3, 2022
- Coloured elevation drawings prepared by KNYMH ARCHITECTS, dated September 2021
- Landscape Plan prepared by adesso design inc. landscape architecture, dated January 21, 2019
- Shadow Impact Analysis, prepared by KNYMH ARCHITECTS, dated August 2019

No Architectural Elevation or floor plan drawings were provided.

III. SUMMARY OF PROFESSIONAL OPINION

8. In my opinion, the proposed development does not adequately address urban design issues related to streetscape, compatibility with and transition to adjacent low rise residential neighbourhoods and what is proposed will not allow for a successful commercial development in this area which is designated Neighbourhood Commercial.

9. The applications refer to the proposed development as a mixed use building. This is not a mixed use building. A majority of the ground floor needs to be non-residential uses. The entire building fronting onto main street should be commercial at grade. The building also needs to be design as a mixed use building with a minimum floor to ceiling height of 4.5 metres not 3 metres which is typical of a residential apartment building.

10. The proposed development does not conform to Section 2.1 of the Town’s Official Plan. As stated in the Town’s Vision ...” small-scale infill will be promoted in outer parts of the urban settlement area but will be sensitive to the surrounding housing character.” In my opinion, the proposed development is not sensitive to the small town character and the surrounding context.

11. The built form is not compatible in height, massing, or scale with the surrounding context and fails to respond to Official Plan policies 2.5.5, 3.4.7.2 and 3.4.7.8. 4 and 5 storeys proposed within the 25 metre setback are not compatible with the low rise character of the adjacent residential. The building’s scale is not mitigated by any stepbacks and/or appropriate low rise building base to break up the height and provide an appropriate transition and minimize overlook. An urban design analysis in the form of an Urban Design Brief is required to be submitted in support of the applications. In my opinion the Urban Design Brief does not provide adequate, meaningful design analysis.

12. The proposed development does not conform to Region of Niagara Official Plan policy 11.A.2 e) g) and i) in that no sustainability initiatives are contemplated, no at grade private or public amenity space is provided and there is not enough space within the boulevard and between the building and the sidewalk to ensure a successful streetscape. Also, there is limited opportunity for appropriate landscape screening in the way of trees.

13. The proposed streetscape does not conform with policy 7.3.1 of the Official Plan and does not provide the opportunity for mature trees on the site to be preserved, nor sufficient building setbacks to incorporate pedestrian paths sufficient for the streetscape character and a main street mixed use development.

IV. SUBJECT SITE, SURROUNDING CONTEXT & CHARACTER

14. The Site is located on the northeast corner of Nelles Road and Main Street East. Known as 133 and 137 Main Street East, the Site is surrounded by low-rise residential, commercial, institutional and office uses. The lands north of the Subject Lands are part of a stable residential neighbourhood and consist primarily of low-rise, 1 – 2 storey, residential dwellings in the form of detached dwellings and townhouses.

15. To the north, immediately adjacent to the Site, is a 6 metre private lane with eight one storey townhouses facing the lane and the Site.

16. To the east is 141, 147 and 149 Main Street East, known as Cole's Florist and Garden Centre, this site currently contains two, 2-storey buildings, originally constructed as single-detached dwellings and now utilized as a garden centre use, including shade structures and surface parking area. A 6 storey mixed use building has been approved in principle subject to substantial redesign as directed by the Tribunal.

17. South across Main Street East are 2 storey converted dwellings with commercial uses. To the west is existing residential consisting of a mix of 1 ½ and 2 storey detached dwellings.

18. The Site is approximately 0.638 hectares in size, with approximately 81 metre frontage along Main Street East and approximately 73 metre frontage along Nelles Road.

19. An unoccupied 2 ½ storey brick dwelling, known as the Nelles House, brick garage and several mature trees are located on the Site. The Nelles House has been designated under the *Ontario Heritage Act*.

20. There is an existing sidewalk along both Main Street East and Nelles Road lined with mature vegetation.

V. THE PROPOSAL

21. The proposed development consists of a four and five storey apartment building that contains some non-residential uses at grade. The building is L shaped along the north and east of the Site, with the longest portion of the building along the north property line. At the end of the L shape, facing Nelles Road, there is a small three storey step. The building steps quickly from three to four storeys for a majority of the building length along the north property line, increasing to five storeys for a majority of the eastern length of the building.

22. 228 sq. metres of commercial space is proposed to be provided on the ground floor but no floor plans were provided to confirm the number of units and location.

23. The proposed development includes the adaptive re-use of the Nelles House as commercial space.

24. The proposed development will contain 148 residential units. No 3 bedroom units are proposed. A total of 189 parking spaces are proposed which include 29 surface spaces, two of which are proposed to be tandem parking spaces, and 5 lay-by spaces along Main Street East.

VI. MIXED USE DESIGN

25. A successful mixed use development works to respond to the surrounding character and context of the area. The site design needs to respond with a compatible mixed use built form, commercial at grade, outdoor amenity space(s) and a relationship with the streetscape that is keeping with the Town's small Town vision and existing surrounding small town character.

26. A mixed use built form combines two or more uses within a building or a site. Typically, a mix between retail on the ground level and other uses above the retail stores, such as offices or residential apartments as well as amenity spaces within the building. A mixed use building implies walkability and vibrancy through activity at grade. Not only does the ground floor of the building need to include a majority of active commercial uses adjacent to the sidewalk with frequent, highly visible entrances adjacent to the street and sidewalk, but in this case a majority of commercial should be provided along both lengths of the building's L shape facing both Nelles Road and Main Street East.

27. The OPA permitting the proposed development contemplates the Site continuing to be designated Neighbourhood Commercial. Therefore, it is particularly important for this proposal to be designed so that the retail and commercial space can be successful.

28. To provide successful and viable non-residential space, the ground floor of the building should be designed and include a majority of non-residential uses such as retail, service commercial and office, and all units should be designed to have large store front windows providing views in and out of the spaces. At a minimum the floor to ceiling height of the ground floor should be 4.5 metres to accommodate a variety of commercial uses. It is important to note that according to the rendered elevations submitted by the applicant, the ground floor is only 3 metres in height.

29. It is unclear the number of retail units proposed but the space indicated on the proposed site plan with a dotted line is a significantly small amount for a mixed use building and does not comprise the entire frontage along Main Street East.

30. In addition to indoor amenity spaces, a successful mixed use development provides at grade outdoor amenity space in the form of parkland dedication, private amenity space and/or public/private amenity space. There is no outdoor amenity space provided.

Finally, a successful mixed use building and the adjacent streetscape require a seamless relationship between the curb line and the building with an appropriate building setback to accommodate seating, landscaping, wide sidewalks and hardscape to facilitate walkability and gathering.

VII. COMPATIBILITY

31. Compatibility does not mean that new development must imitate the character, type and density of the surrounding area but that it should be designed to fit and reinforce the character of the neighbourhood. Building compatibility means neighbouring buildings of similar size and massing work

together to create a pleasing streetscape and provide consistency with adjacent buildings and different uses.

32. The Town's Official Plan provides criteria for evaluating compatibility of new development with existing residential uses. However, these Official Plan policies are not the only means of assessing and ensuring compatible development. There are a number of design tools that can be used to ensure the size, scale, setbacks, stepbacks, and podium height of the overall design are compatible, and provide appropriate transition to ensure the building fits with the character of the neighbourhood.

Transition – Built Form & Scale

33. Transitions are typically applied in areas where built form, height, massing, and land uses change. The intent is to minimize overlook and shadow impacts. There are many design tools that can be used to ensure an appropriate transition of a building design between a property and the surrounding neighbourhood. These tools include the use of appropriate setbacks, building podiums and stepbacks, shadow analysis and the use of a 45 degree angular plane analysis.

34. An appropriate built form plays a significant role in determining compatibility within the surrounding area and how the building fits within the character of Main Street East. Overall building height, as well as setbacks and stepbacks can mitigate impact from new development on existing uses.

35. The Site is currently zoned with a maximum height of 8.5 metres, or 2 storeys. The proposed 5 storey building is approximately 16 m in height, with no stepbacks along the north property line to mitigate the massing impact. The scale of the proposed building is significantly larger than the surrounding buildings which are typically 1-2 storeys and one storey along the north property line.

36. There is a 6 metre private lane that separates the proposed development from existing residential along the north property line, with the result that the front yards of the existing one storey townhouses are setback approximately 8 metres from the property line. The proposed balconies are setback 5.2m from the property line. In my opinion, a 13 metre separation distance between a 4 storey building and a one storey townhouse is inadequate and inappropriate.

37. **Section 4a.6 Building Height** of the Region's Model Urban Design Guidelines provide direction for transition of buildings. This section includes the following guidelines:

b) The design of tall buildings should respond to potential negative impacts on adjacent properties, including overshadowing, overlooking, wind-tunnel effects. Therefore, building height and mass should be appropriate to the type and nature of adjoining development.

c) Height transition should be incorporated into the design of tall buildings, especially when situated adjacent to low density - low rise areas.

d) Buildings over 3 storeys should have a base building height of no greater than 2 storeys above adjacent development. Upper floors should step back to reduce visual impact and building mass as perceived at street level and from adjoining properties. The total building height, and upper floor step-backs should be designed according to appropriate visual angular plane analysis.

38. The proposed development does not respond to potential negative impacts on adjacent properties. The building is taller than 3 storeys adjacent to the existing one storey townhouses and there

is no building base provided. No visual angular plane analysis as per the Region's Guidelines was provided in either the PJR or the UDB. There are no stepbacks provided as part of the building design along the north property line.

39. In my opinion, transition is not adequately addressed in either the configuration of the Site or the design of the building.

Shadow

40. A Shadow Study is an important design tool that illustrates how a development will cast shadows and the potential impact of a development on access to sun and daylight to the surrounding buildings, public realm, public and private open space. The results of a shadow study should help inform the massing and orientation of a building to ensure appropriate areas of a site receive sunlight and shade and the same for the public realm and surrounding areas and provide recommendations for appropriate mitigations.

41. Policy 2.5.5 of the Town's OP directs the Town decision-maker, when reviewing intensification applications, to consider their impact on adjacent residential uses with regards to such matters as shadow. Policy 9.12.3 requires a shadow study be provided and scoped as part of a terms of reference.

42. The Town's Shadow Study Terms of Reference provides parameters for the study's completion and requires a *"written brief summarizing the shadow analysis, outlining how the criteria have been met, and describing any proposed mitigating measures."*

43. A Shadow Impact Analysis (Shadow Study) prepared by KNYMH INC. was submitted as part of the applications.

44. Section 6.0 of the Shadow Impact provides a Summary of Observations and states:

"SUMMARY OBSERVATIONS: REGARDING SHADOW IMPACT OF A 5-STOREY DEVELOPMENT ON THE NEIGHBOURHOOD

- *Minor impact to adjacent commercial zoned properties to the East*
- *Minor morning impact on public sidewalks*
- *No spring/fall or summer impact on Townhouses developments to the North*
- *Minor evening shadow in spring/fall on some townhouses to the Northeast*
- *Minor winter afternoon impact on Townhouses developments to the North and Northeast at a time when most things are dark and in shadow regardless.*
- *It will have no impact on the properties to the South.*
- *No negative impact on the relocated Heritage House.*

Based upon the analysis it is our opinion that the proposed development and its proposed height of 5 storeys will not have a negative overall effect on this neighbourhood."

45. Both the discussion and the summary of observations in the Shadow Study provide subjective descriptions such as "generally", "typical", "minor", with no specific shadow duration or quantification. What does minor mean? What does typical mean? The analysis needs to provide the actual duration of shadows cast in time - 1 hour, 4 hours etc. Only then can one determine the actual impact on both the Site and the surrounding public and private realm.

46. For example, according to the diagrams provided:
- (a) For June – at 2pm shadow is cast on the proposed north balconies and at 3pm on the east balconies, the shadows remain on the north and east balconies until 7pm. Therefore, the north balconies are in shadow for 4 hours from 2pm until 7pm.
 - (b) For March – there is shadow on the west side of Nelles Road on the existing residence for 2 hours from 8:30 am to 9:30 am, at 11:30 am the north balconies of the proposed building are in shadow, at 12:30 pm the shadow is cast on the existing trees along the north property line and remain until 6:30 pm. Therefore the north balconies are in shadow for a minimum of 8 hours and the existing trees will be without sun for a minimum 7 hours.
 - (c) For September - the east property is in shadow for 3 hours from 3:30 pm until 6:30 pm. Shadows are cast on the existing residences to the north starting at 4:30 pm until 6:30 pm.

47. In my opinion the Shadow Study does not provide an appropriate analysis of the duration or quantity of shadows being cast on the Site and surrounding areas to determine the actual impact nor are there any mitigating measures provided for the shadow impacts. Also, there is no recommendations or discussion of how the building was or could be stepped, massing adjusted or setbacks increased to reduce or eliminate any shadow impacts. In addition, the Shadow Study fails to recognize not only the true impact of the shadows on the surrounding area but also the impact on units within the proposed development itself.

48. In my opinion, 7 and 8 hours of shadow is not minor and the shadow impact from the proposed development is unacceptable.

Overlook

49. Overlook is an important consideration to confirm an appropriate transition exists between buildings. By definition, overlook, means having a view from above. Therefore, a taller building located beside a lower building will overlook that building. Overlook, or impact on privacy, can be eliminated or minimized through building orientation, appropriate facing distances, including balcony design, and setbacks. Together, these design elements mitigate overlook and ensure privacy between the windows or balconies of one building onto another.

50. In addition to shadow, Policy 2.5.5 of the Town's OP directs the Town decision-maker to consider a proposed development's impact on adjacent residential uses with regards to overlook. Transition and compatibly design tools for the Town include 45 degree angular plane and a 25 metre setback. A 45 degree angular plane ensures the building either steps back away from the property line or is setback an appropriate distance, including balconies, to reduce overlook. A 25 metre setback where only 2 storeys above an adjacent building height, in this case one storey, further prevents any overlook.

51. The PJR includes one statement that the development respects a 45 degree angular plane. Neither the UDB nor the PJR provide an the analysis for a 45 degree angular plane. Looking at the site plan the building setback does not meet the 25 metre setback from the north property line and while it appears that the building may meet a 45 degree angular plane, as noted, neither are confirmed as part the submission.

52. Balconies can contribute to a building's overlook where private amenity space of one building can look onto the private amenity spaces of adjacent buildings. The proposed development indicates balconies encroach within the rear yard and side yard adjacent to the existing one storey townhouses to the north. Balconies are permitted in Section 4.9 of the Town's By-Law to encroach 1.5 metres into the side yard. The proposed development proposes a 2 metre encroachment for balconies within the rear yard. Along the north and east elevations there are a total of 47 and 48 balconies proposed to project within an already reduced setback.

53. In addition to building setback minimizing overlook, an appropriate setback between the building and the property line provides opportunity for screening. An appropriate setback allows for landscaping and trees to be planted to provide screening between private amenity space to help with privacy.

54. In my opinion, an inappropriate and unacceptable overlook condition is likely to exist, as the proposed development fails to respect the 25 metre setback, contemplating balconies encroaching 2 metres into the setback and provides insufficient space for trees to provide effective screening, overlook will be an issue.

Town of Grimsby Official Plan Compatibility Criteria

55. There are three Official Plan policies that should be considered for evaluating the compatibility of the proposed development: Policies 2.5.5, 3.4.7.2, and 3.4.7.8. Applying these policies in the preparation of a site plan help ensure the proposed development is appropriate for the site and the surrounding context. Given the proposed Neighbourhood Commercial designation does not have official plan criteria to evaluate a mixed use development other criteria in the Official Plan should also be considered. In my opinion, conformity should be achieved with policies 2.5.5, 3.4.7.2 and 3.4.7.8. The proposed development does not conform to these policies.

56. Policy 2.5.5 directs the Town decision-maker, when reviewing intensification applications, to consider their impact on adjacent residential uses with regard to overlook, shadowing and existing character and the need for transition in heights and proposed densities. Policy 2.5.5 directs staff to consider the criteria in Section 3.4.7 of the Official Plan.

57. **Policy 3.4.7.2** speaks to general built form for new development for a Residential/Mixed Use Area. The key direction of the policy is to ensure compatibility of new built form with adjacent and surrounding built form and that the design of a site employs urban design best practices. Policy 3.4.7.2 states the following:

a) New development shall be compatible with adjacent and neighbouring built form by ensuring that the siting and massing of new buildings does not result in undue adverse impacts on adjacent properties particularly in regard to adequate privacy conditions for residential buildings and their outdoor amenity areas

b) To ensure that the compatibility referenced in a) is achieved; the implementing Zoning By-law will establish appropriate setback and yard requirements which recognize the existing built-form character.

d) Access from sidewalks and public open space areas to primary building entrances shall be convenient and direct, with minimum changes in grade.

e) To minimize disruptions to traffic flow and to maximize safety and the attractiveness of Arterial Roads, individual direct vehicular access shall be minimized, and, in some cases prohibited.

g) To reduce the impact of surface parking and to provide at-grade amenity areas, the provision of structured parking shall be encouraged for higher density forms of development.

58. In my opinion the proposed development does not conform with policy 3.4.7.2:

- (a) The proposed setback of 6.4 metres to the building and 5.20 metres to the balconies from the north property line is inadequate. A 6 metre wide private lane separates the proposed development from the one storey townhouses to the north of the Site. The existing front yards of the townhouses are setback approximately 8 m from the shared property line. The reduced setback in addition to the adjacent lane does not provide adequate separation for the proposed height and massing of the north flank of the building. The proposed massing creates an abrupt 4 storey building wall that does not provide an appropriate transition to the one storey townhouse dwellings. The building's scale is not mitigated by any stepbacks and/or an intervening 2 storey podium built form to break up the large and long massing. It is my opinion that the rear portion of the building does not provide an appropriate built form transition in accordance with criteria a) and b).
- (b) Without floor plans or confirmation on the site plan where the main building entrance is located it is unclear if or how 3.4.7.2.d) is met.
- (c) Subsection g) is not adequately addressed. The site plan concept provides for a generous amount of surface parking but no at-grade amenity space. The amount of surface parking and the location of the underground ramp limit the ability to provide at-grade amenity areas. Balancing the need for minimal surface parking, appropriate access to the underground with space for outdoor amenity space is critical for the success of the development.

59. Policy 3.4.7.8 of the Official Plan sets out development criteria for Apartment Buildings and states the following:

a) Apartment buildings should be oriented to front, face and feature the public road. A substantial portion of the building should front the public road at a minimum setback.

e) Where an apartment building in excess of 4 storeys in height abuts a Low or Medium Density Residential designation or existing development, a 45 degree angular plan shall be established at a point 7.5 metres directly above the abutting interior side and/or rear property line.

f) Where adjacent lands are designated Low or Medium Density Residential, the height of all new buildings, within 25 metres of the property line of these designations, shall not be greater than 2 storeys above the existing adjacent buildings, or, if vacant, 2 storeys above the maximum permitted height in the adjacent designation.

g) Alternative concept plans including computer generated perspectives showing the massing, orientation and urban design of the building as well as streetscape within the context of the site shall be required as part of any application for High Density Residential development together with traffic, parking, Hydrogeological, shadowing, servicing and planning justification studies.

60. In my opinion the proposed development does not conform with policy 3.4.7.8:

- (a) The proposed development also does not conform with 3.4.7.8 f), which requires the height of new buildings abutting medium density residential areas and within 25 metres of the property line to be no greater than 2 storeys above the existing adjacent buildings. In this case, the abutting medium density residential development contains 1 storey townhouses, so the proposed development should be no taller than 3 storeys for the portions of the building that are less than 25 metres from the property line. Within 25 metres of the property line the building is 4 and 5 storeys.
- (b) The proposal also fails to conform with policy 3.4.7.8 e) and g) as no angular plane analysis, perspectives showing the massing, orientation, or urban design of the building, nor streetscape perspectives were submitted with the application.

VIII. PUBLIC REALM/STREETSCAPE

61. A main street is defined as “*the principal street of a town, traditionally the site of shops, banks and other businesses.*” The definition itself conjures images of what the streetscape should look like. The streetscape associated with a mixed use building along a main street needs to provide adequate space between the front of the building and adjacent street curb to safely and comfortably accommodate pedestrian movement, streetscape elements, and activities related to the uses at grade.

62. Main streets are for walking, browsing, meeting, gathering as well as being efficient to find the store or services you are looking for along the street. An effective streetscape needs to address the adjacent uses appropriately with signage, attractive lighting, street furniture, outdoor dining, amenities, wide walkways and sidewalks that connect within a site and along the street while accommodating all ages and abilities.

63. Policy 7.3.1 of the Town’s OP provides direction for additional streetscape design requirements for Main Street East that include:

- a) Preserve to the greatest extent, mature vegetation, remnants of agricultural activity and other natural features within the site and along the street edge and at the Escarpment; and*

b) Incorporate areas for pedestrian paths to connect to the existing, informal walking paths and footbridges; and,

c) Require larger building setbacks to maintain the existing streetscape character.

While many of the details of a successful main street area can be finalized through site plan such as lighting, landscape design, seating, and wayfinding, a few key components need to be determined as part of the zoning by-law approval process. The preservation of mature vegetation, incorporation of areas for pedestrian paths, boulevard space and sidewalk width are key to determining building setback and not only preserving trees but accommodating new street trees. The details of building setback, landscape areas, sidewalk width and location of laybys all need to be detailed and understood at the zoning approval stage in order to ensure that appropriate setbacks are provided and a streetscape that will contribute to the success of Main Street East can be implemented.

64. The site plan prepared by IBI dated August 3, 2022 proposes 5 lay-by parking spaces in front of the building with a relocated 1.5 m public sidewalk and approximately a 1.5m building setback. The proposed lay-by parking is good in principle, but it is important to accommodate for the space taken away from the boulevard. A typical boulevard width, from curb to property line, is 5 metres, a sidewalk 2 to 3 metres and a mixed use building setback 1 to 3 meters. The lay-bys take away almost 3m of that useable space within the boulevard that the building setback does not accommodate for. The lay-bys are also proposed in isolation of the entire streetscape from Nelles Road to Wentworth Street.

65. In my opinion, the proposed building setback and limited boulevard space do not contribute to enhancing the streetscape character along Main Street East and fail to conform to policy 7.3.1. The lay-bys, while good in principle, remove a large area of the boulevard that is not accommodated for as part of the building setback. The building setback is not sufficient to accommodate the ability for: more than 2 people to walk side by side on the sidewalk; street trees; seating; and retail spill out areas. Furthermore, the proposed lay-bys and streetscape do not consider any development to the east, to ensure a successful and comprehensive streetscape from Nelles Road to Wentworth Street.

VII. ISSUES TO BE ADDRESSED

66. My evidence will address Issues 3, 4, 9, 10, 11 and 16 set out on the Procedural Order. The issues, followed by my responses, are set out below.

Issue 3 - Do the applications conform with the Region of Niagara Official Plan, including polices 4J and 11.A.2?

Regional Design Guidance

67. Section 4J Urban Design and the Public Realm Policy of the Region's Official Plan promotes attractive communities and enhancement of quality of life and the use of Urban Design Analysis. Through adoption of the Region's Model Urban Design Guidelines (Region's Guidelines) or similar local guidelines, the Region supports the creation of a strong sense of place and development that considers design at the neighbourhood scale.

68. The Region's Guidelines were prepared as part of the Region's Smart Growth agenda. They were made available to local municipalities for adaptation and possible adoption. The Guidelines are used as a tool by the Town as indicated in Section 9 of the Town's Official Plan "It is intended to make use of other tools, such as the Region's Model Urban Design Guidelines..."

69. A Urban Design Brief should provide an urban design analysis and justification for how the development meets the intent of the Region's Model Urban Design Guidelines, as well as the both the Region and the Town's polices.

70. Page 42 of the PJR states: "...The UDB prepared by IBI Group reviews the Region's Model Urban Design Guidelines to ensure that the proposed design develops a strong sense of place and considers the context of the surrounding area. Please refer to the UDB for details. Details regarding the site design will be established at the Site Plan Control stage of the planning process."

71. For both official plan amendment and re-zoning applications, it is very important to provide an urban design analysis for why the proposed change from what is currently permitted, a neighbourhood commercial development to a mixed-use development, can be supported. The analysis should provide a detailed examination of the Region's Guidelines. The Brief needs to include justification for how this development meets the intent of the Region's Guidelines and why the Town should both consider and accept the proposed changes. The UDB does not mention the Region's Guidelines and does not provide any urban design analysis.

72. In my opinion the UDB fails to justify why the proposed development is acceptable from an urban design perspective.

73. **Policy 11.A.2** of the Region's Official Plan encourages the development of attractive, well designed residential development. The criteria in Policy 11.A.2 encourages development that:

- a) *Provides for active transportation within neighbourhoods with connections to adjacent residential and commercial areas, parks and schools.*
- b) *De-emphasizes garages, especially in the front yard.*
- c) *Emphasises the entrance and points of access to neighbourhoods.*
- d) *Is accessible to all persons.*
- e) *Incorporates the principles of sustainability in building design.*
- f) *Provides functional design solutions for such services as waste collection and recycling.*
- g) *Provides an attractive, interconnected and active transportation friendly streetscape.*
- h) *Contributes to a sense of safety within the public realm.*
- i) *Balances the need for private and public space.*
- j) *Creates or enhances an aesthetically pleasing and functional neighbourhood.*
- k) *Encourages a variety of connections based on transportation mode between land uses based on diverse transportation modes, allowing people to move freely between the places where they live, work and play*

74. It is my opinion that the proposed development does not conform to Policy 11.A.2 e) g) and i):

- e) Incorporates the principles of sustainably in building design.***

75. Sustainability is a key consideration by the Town when reviewing development applications and reflected in both the Region's and Town's OP.

76. Section 4.5 of the Town's Official Plan **ENERGY CONSERVATION AND CLIMATE CHANGE** states that intent of this Plan is "to support energy efficiency and improve air quality by encouraging the reduction of energy consumption, endorsing the development of compact and mixed-use neighbourhoods, and by promoting innovative forms of alternative and renewable energy, in land use and development patterns." The objectives are to reduce air pollutants and greenhouse gasses and reduce energy consumption, which can be achieved by providing among other solutions: services close to where people live to reduce dependence on the automobile; the use of renewable energy sources; minimizing the impact of shadow and encourage passive solar energy gain with building orientation; rehabilitation of existing structures, and inclusion of energy star appliances. The Town may consider flexibility in zoning and site plan to accommodate increased energy efficiency and vegetation.

77. The Planning Report provides some references to climate change but little detail of what is being proposed other than the merits of a mixed use compact built form are provided.

78. While the UDB mentions "sustainability actions" on page 5, no further information is provided to describe what those actions are proposed to be.

79. In my opinion the proposed development does not contemplate any innovative or sustainable design elements to be incorporated as part of the design and does not provide any concrete evidence that this development will help mitigate climate change, other than the fact that it is a mixed use building.

g) Provides an attractive, interconnected and active transportation friendly streetscape.

80. The appellant has provided no details about the proposed treatment of the Nelles Road streetscape.

81. In my opinion, the proposed streetscape along Main Street East is inadequate, lacks sufficient detail and will not provide an attractive and friendly streetscape. The supporting materials filed by the appellant in support of the proposed development fail to establish that an attractive, interconnect and active transportation friendly streetscape will be achievable on the Site. My detailed comments and opinion on the proposed streetscape matters are found at paras 63 – 67 above.

i) Balances the need for private and public space

82. Balancing private and public space for an intensified mixed use site is important and should be considered based on the need to service the residents, employees and guests and the sites location in relation to existing parks or open space. There is also a need for appropriate private amenity space.

83. There is no park or open space within a 5 minute walk of the site and no access to such without crossing Main Street. The development does not propose any ground level amenity space, public private space or space such as an urban square.

84. It is important to note that no architectural floor plans were provided as part of the application so the information of what may be proposed as part of the building design is taken from IBI's site plan. The site plan proposes private balconies projecting within the side and rear yard setbacks, and a fifth floor rooftop patio, a fifth floor amenity area and terraces facing Main Street East.

85. No mature vegetation is proposed to be preserved as part of the development.
86. There is minimal space on the Site for landscaping to provide the opportunity for mature trees to provide screening for private balconies for the residents of the building and for the existing residences along the north property line.
87. The underground ramp is proposed in an inappropriate location and removes space from the Site that could be used for amenity space
88. Neither the PJR nor the UDB mention amenity space and no justification is provided for why no at grade amenity space is provided.
89. In my opinion, the proposal fails to conform with policy 11.A.2 e), g) and i) of the Region's Official Plan because no sustainability initiatives are provided, the proposed streetscape is not attractive, interactive and does not support active transportation and no at grade private or public amenity space is provided.

Issue 4 - Do the applications conform with the Town of Grimsby Official Plan, including policies 2.1, 2.5.5, 3.4.7.2, 3.4.7.4, 3.4.7.8, and 7.3?

Vision

90. Section 2.1 of Grimsby's Official Plan sets out the Town's Vision Statement. This statement guides the strategic direction for Grimsby. The Vision states that "Grimsby's future will build on its small-town scenic character through managed growth that will provide for a greater choice for housing, alternative modes of transportation, increased employment, a vibrant Downtown and an accessible public waterfront." Further, it states that "Small-scale infill will be promoted in other parts of the urban settlement area but will be sensitive to the surrounding housing character." Although the proposed development will contribute to a greater choice for housing and may encourage alternative modes of transportation in the future, it is my opinion that the proposed development fails to respond to the vision of a small-town, small-scale development in Section 2.1 of the Town's Official Plan.
91. Policy 2.5.5 is discussed in para 33 to 62; in my opinion the proposed development does not conform with policy 2.5.5.
92. Policy 3.4.7.2 is discussed in para 59 and 60; in my opinion the proposed development does not conform with policy 3.4.7.2.
93. In my opinion policy 3.4.7.4 does not apply.
94. The design of the proposed development fails to respond to the vision of a small-town, small-scale development as stated in Section 2.1 of the Town's Official Plan. The lack of setback, transition and respect for the streetscape does not appropriately reflect a small-town, small-scale development. The proposed development needs to better address compatibility, transition, and streetscape to meet the intent of the vision.

95. **Issue 9 - Are the applications appropriate from the perspective of coverage, height, massing and urban design?**

96. As part of its Official Plan amendment and Zoning By-law amendment applications, the appellant was required to prepare and submit an urban design brief. An urban design brief should provide a vision and set of guiding principles as well as a detailed analysis of the proposed design in the context of the Town, the surrounding neighbourhood and the site, the appropriateness of the built form and overall site design. The intent of the brief is to provide an analysis using design tools and techniques that show how the development expresses the vision and principles, how if any negative impacts will be mitigated and why a change in use and built form should be supported.

97. I note that the UDB submitted by the appellant did not provide any analysis.

98. In my opinion, based on my review and consideration of the relevant Official Plan policies, guidelines and best practices as addressed above in paras 39 to 41 and 52, the proposed development is not appropriate in terms of coverage, height, massing and urban design.

Issue 10 - Do the applications provide an appropriate transition to the adjacent stable residential neighbourhood?

99. The proposed development is not within a stable residential neighbourhood, so the design of the building is not expressly required to provide a consistent relationship with existing adjacent housing lots. Understanding this, I disagree with the Planning Report that “... *development design criteria does not apply to the subject lands for stable residential neighbourhoods or stand-alone apartment buildings, as the proposed development is mixed-use and a stable residential neighbourhood is defined as: “the residential designate portions of the built-up area but excluding Major Intensification areas delineated on Schedule A.”*

100. The proposed development must ensure compatibility with adjacent medium density housing, particularly to the north, with setbacks and building stepbacks. Because the Site is adjacent to a stable residential neighbourhood, compatibility must be considered. In my opinion, as described in paras 33-62, the proposed built form and site design does not sufficiently address compatibility to the adjacent neighbourhood, particularly along the north property line. As discussed in paragraph 33, building compatibility means more than just setbacks.

101. As discussed in paragraphs 61 to 62 above, policy 3.4.7.8 of the Town’s Official Plan directs that where a building is adjacent to medium density residential uses, the height within 25 metres of the property line shall not be greater than 2 storeys above the existing adjacent buildings. Limiting heights within 25 metres of adjacent medium density residential uses ensures that built form appropriately transitions and that there is compatibility between lower and higher density residential uses.

102. Portions of the proposed 4 and 5 storey building are situated less than 25 metres from the rear property line of the adjacent residential uses. Adjacent residential uses are one storey in height, which requires portions of the proposed building within 25 metres of the property line to be no taller than 3 storeys. No stepbacks or varied height is provided in the buildings massing to achieve this policy direction. Rather, the proposed building provides a 4 storey wall.

103. In my opinion, the applications do not provide an appropriate transition to the adjacent stable residential neighbourhood.

Issue 11 – Do the applications contribute to enhancing the streetscape character along Main Street East?

104. The issue of a successful streetscape character along Main Street East is discussed in paragraphs 59 - 62.

105. In my opinion, the proposed building setback and limited boulevard space do not contribute to enhancing the streetscape character along Main Street East.

Issue 16 - Are the applications compatible with adjacent uses and the surrounding community?

106. The issue of compatibility is discussed in paragraphs 32 - 58.

107. In my opinion, the buildings lack of transition in height and minimal setbacks are not compatible with the adjacent uses and the surrounding community.

VIII. Conclusion and Recommendation to the Tribunal

108. The design of the proposed development fails to respond to the vision of a small-town, small-scale development as stated in Section 2.1 of the Town's Official Plan. The lack of setback, transition and respect for the streetscape does not appropriately reflect a small-town, small-scale development. The proposed development needs to better address compatibility, transition, and streetscape to meet the intent of the vision.

109. In my opinion, the Proposed Development is not compatible with the surrounding context because:

- (a) A greater separation distance is required between the northern flank of the building and the immediate adjacent one storey townhouses to the north of the Site.
- (b) The 4 storey northern flank of the building does not conform to the 25 metre setback requirements of policy 3.4.7.8 where the height of new buildings abutting medium density residential areas and within 25 metres of the property line is to be no greater than 2 storeys above the existing adjacent buildings. In this case, the abutting medium density residential development contains one storey townhouses, so the proposed development should be no taller than 3 storeys for the portions of the building that are less than 25 metres from the property line.

110. **Policy 11.A.2** of the Region's Official Plan encourages the development of attractive, well designed residential development. In my opinion the proposed development does not conform to criteria e), g) and i) because:

- a) There is no mention of any innovative or sustainable design elements to be incorporated as part of the design
- b) The proposed streetscape along Main Street East is inadequate, lacks sufficient detail and will not provide an attractive and friendly streetscape. The supporting materials filed by the appellant in support of the proposed development fail to establish that an attractive, interconnect and active transportation friendly streetscape will be achievable on the Site.
- c) Neither the Planning Report nor the Brief mention amenity space and no justification is provided for why no at grade amenity space is provided.

111. The proposed development, although labelled as a mixed use building, would not allow for the success or viability of non residential uses on the site. The proposed building includes very little commercial or retail at grade and does not have a 4.5m ground floor height. The Proposed development could do a much better job of incorporating a majority of non-residential uses at grade and removing proposed residential facing Main Street East.

112. Finally, in my opinion, the streetscape character of the proposed development does not provide for sufficient space to accommodate an active at grade, walkable streetscape to support a mixed use building and provide a successful Main Street East streetscape.



CATHERINE JAY

B.L.A., CSLA, OALA, MCIP, RPP
Principal
Head of Urban Design



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Catherine Jay is a Principal and Head of Urban Design at SGL.

As Landscape Architect/Urban Designer and registered Planner, Catherine has over 25 years of experience. Skills range from conceptual design to implementation and including Park Planning and Design, Site Planning, Urban Design Guidelines, Urban Design Briefs, Community Master Plans, Secondary Plans and project management. Bringing 20 years of public sector experience, Catherine has led complex, multi-disciplinary projects giving her the experience and ability to take on both small and large scale projects related to Landscape Architecture, Urban Design and Planning. Catherine has prepared budgets, and managed projects within budget and scope. With a strategic approach Catherine is able to use the design process to solve problems and provide sustainable solutions to today's urban issues.

Catherine is currently a mentor for OPPI Provisional Members and an OALA Professional Development Reviewer.

Professional Memberships

- Canadian Society of Landscape Architects - CSLA
- Ontario Association of Landscape Architects - OALA
- Canadian Institute of Planners - MCIP
- Ontario Professional Planners Institute - RPP

Academic History

Degrees	Bachelor of Landscape Architecture University of Guelph, 1994
Other Courses	Executive Development Course, McGill Executive Institute 2018
	Landscape Architectural Registration Exams, 2020

Professional Experience

Since 2018	Principal/Head of Urban Design SGL Planning & Design Inc.
2017 - 2018	Development Manager - North District City of Markham
2016 - 2017	Manager - Growth Management & Secondary Plans City of Markham.
2009 - 2016	Manager - Urban Design City of Markham
2007 - 2009	Senior Planner - Town of Markham
2005 - 2007	Landscape Architect - Town of Ajax
2004 - 2005	Landscape Architect - Town of Markham
2001 - 2003	Site Plan Coordinator - City of Oshawa
1998 - 2000	Landscape Planner - Town of Markham
1995 - 1998	Landscape Architectural Intern - Paul Cosburn Associates



Areas of Specialization

- Urban Design, Landscape Architecture and Community Design
- Land Development and Implementation
- Streetscape and Urban Design Guidelines
- Urban Design Briefs for Infill and Greenfield Development
- Secondary Plans
- Multi-Disciplinary Team Management

REPRESENTATIVE PROJECTS

Urban Design & Master Planning

- Trafalgar Tertiary Plan, Milton
- Urban Design Guidelines, Brantford
- Urban Design Guidelines, Burlington
- Urban Design Guidelines, Pickering
- Urban Design Brief, Mississauga
- Urban Design Brief, Barrie
- Urban Design Brief, Niagara on the Lake
- North Markham's Future Urban Areas Urban Design Guidelines
- North Markham's future Urban Area Conceptual Master Plan
- Berczy Glen Community Design Plan, Markham
- Shared Spaces Our Places Markham's Public Realm Strategy
- Cornell Precinct Plan, Markham
- Trees for Tomorrow Streetscape Manual, Markham

Official Plans and Secondary Plans

- Southeast Georgetown Secondary Plan
- Downtown Burlington, Scoped Official Plan
- Whitby Downtown Secondary Plan, Whitby
- Soper Springs Secondary Plan, Clarington
- Soper Hills Secondary Plan, Clarington
- Brantford Urban Expansion Secondary Plan
- North West Welland Secondary Plan
- Berczy Glen Secondary Plan
- Robinson Glen Secondary Plan

Intensification and Land Development

- High Density, Mixed Use, Mississauga
- High Density, Mixed Use, Vaughan Metropolitan Centre
- High Density, Mixed Use, Toronto
- High Density, Mixed Use, Vaughan
- High Density, Mixed Use Golden Mile
- Residential Development, Niagara-on-the-Lake
- Mixed Use Development, Barrie
- Residential Development, Hamilton
- Subdivision Approvals, Markham Centre
- Site Plan Approvals, Markham Centre
- Subdivision Approvals, Cornell
- Site Plan Approvals, Cornell

Community Facilities, Planning and Design

- Aaniin Community Centre Site Plan, Markham
- Pan Am Centre Site Plan, Markham
- Cornell Community Centre Site Plan, Markham
- Markham Stouffville Hospital Expansion Site Plan
- UOIT Campus Master Plan and Site Plans, Oshawa

Parks and Public Open Space Design

- Aaniin Community Centre Urban Square, Markham
- Aaniin Community Centre Green Street Pilot Project, Markham
- Pan Am Centre Urban Square, Markham
- Cornell Community Centre Urban Square and Healing Garden, Markham
- Markham Centre Central Park, Markham
- Enterprise Drive, Markham
- Beaupre Park, Markham

Landscape Architecture

- Landscape Master Plan, Residential Development, Niagara on-the-Lake
- Landscape Plans and Details, High Density, Mixed Use, Toronto
- Landscape Master Plan, High Density, Mixed Use Vaughan
- Outdoor Amenity Area, Employment Lands Mississauga
- Landscape Plans and Details, Hotel, Toronto
- Restoration Planting Plan, Residential Development Beaverton
- Landscape Amenity Area, Residential Apartment Site Plan, Guelph
- Landscape Master Plan, Landscape PlanDetails, Mixed Use, Toronto

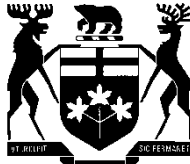
Peer Reviews

- Mixed Use Intensification, Grimsby
- Mixed Use Intensification, Vaughan City Centre
- Mixed Use Intensification, Burlington
- Landscape Architectural Peer Review, Innisfil

Expert Testimony

- Catherine has given expert testimony to the OLT on urban design





Ontario
Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

Acknowledgment Of Expert's Duty

OLT Case Number	Municipality
21-001631	Town of Grimsby

1. My name is Catherine Jay
I live at the Oshawa
in the Region of Durham
in the province of Ontario
2. I have been engaged by or on behalf of the **Town of Grimsby** to provide evidence in relation to the above-noted Ontario Land Tribunal ('Tribunal') proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise;
 - c. to provide such additional assistance as the Tribunal may reasonably require, to determine a matter in issue; and
 - d. not to seek or receive assistance or communication, except technical support, while under cross examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date September 20, 2022

Cathy Jay
.....
Signature