

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 08, 2022 **CASE NO(S):** OLT-22-002366
(Formerly PL210286)
OLT-21-001560
(Formerly CRB2112)
OLT-21-001561
(Formerly CRB2113)

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

Applicant and Appellant:	Losani Homes (1998) Ltd.
Subject:	Request to amend the Official Plan – Failure of the Town of Grimsby to adopt the requested amendment
Existing Designation:	Neighbourhood Commercial Area
Proposed Designated:	Neighbourhood Commercial Area, site specific
Purpose:	To permit a seven storey mixed-use building
Property Address/Description:	141-149 Main St. E.
Municipality:	Town of Grimsby
Approval Authority File No.:	OPA-26OP-16-2002
OLT Case No.:	OLT-22-002366
Legacy Case No.:	PL210286
OLT Lead Case No.:	OLT-22-002366
Legacy Lead Case No.:	PL210286
OLT Case Name:	Losani Homes (1998) Ltd. 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:	Losani Homes (1998) Ltd.
Subject:	Application to amend Zoning By-law No. 14-45 – Refusal or neglect of the Town of Grimsby to make a decision
Existing Zoning:	Neighbourhood Commercial (NC), site specific exceptions 19 and 126

Proposed Zoning:	Neighbourhood Commercial (NC), site specific exceptions (to be determined)
Purpose:	To permit a seven storey mixed-use building
Property Address/Description:	141-149 Main St. E.
Municipality:	Town of Grimsby
Municipality File No.:	26Z-16-2004
OLT Case No.:	OLT-22-002367
Legacy Case No.:	PL210287
OLT Lead Case No.:	OLT-22-002366
Legacy Lead Case No.:	PL210286

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Owner/Objector:	Losani Homes (1998) Ltd.
Subject:	Objection to the Notice of Intention to Designate
Property Address:	141 Main Street East
Legal Description:	CON 1 PT LT 6, North Grimsby; PTS 30 & 31 & SUBJECT TO AN EASEMENT OVER PTS 24 to 29, 30R-10405; GRIMSBY
Municipality:	Town of Grimsby
OLT Case No.:	OLT-21-001560
Legacy Case No.:	CRB2112
OLT Case Name:	Losani Homes (1998) Ltd. v. Grimsby (Town)

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended

Owner/Objector:	Losani Homes (1998) Ltd.
Subject:	Objection to the Notice of Intention to Designate
Property Address:	147 Main Street East
Legal Description:	PT LT 6 CON 1, North Grimsby (FMLY PCLS 18 & 19, PT PCL 17), as in RO635982 & RO693171; PT 30R-8135; GRIMSBY
Municipality:	Town of Grimsby
OLT Case No.:	OLT-21-001561
Legacy Case No.:	CRB2113
OLT Case Name:	Losani Homes (1998) Ltd. v. Grimsby (Town)

Heard: July 4-15, 2022 by Video Hearing and July 25, 2022 in writing

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

Losani Homes (1998) Ltd.
("Applicant"/"Appellant")

R. Kehar

Town of Grimsby
("Town"/"Grimsby")

T. Halinski

DECISION DELIVERED BY S. TOUSAW AND INTERIM ORDER OF THE TRIBUNAL**INTRODUCTION**

[1] Just as "a picture is worth a thousand words," the retention and preservation of heritage structures ensures their visibility to tell a story much more effectively than attempting commemoration through such measures as documentation or signage, following their demolition. Here, the retention of two heritage fruit-farm houses is supported, while also enabling mixed-use intensification on the same property.

[2] The Applicant proposes to develop a six-storey, mixed-use building at 141, 147 and 149 Main Street East, Grimsby (the "site").

[3] The Applicant appealed to the Tribunal on the absence of decisions by the Town on applications for Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") under the *Planning Act* ("Act"). The Applicant also appealed to the Tribunal on the Town's Notice of Intention to Designate ("NOID") 141 and 147 Main Street East ("Main") and the Town's refusal to grant demolition permits on those lots, under the *Ontario Heritage Act* ("OHA"). These dwellings are referred to as "141" and "147."

[4] This case underscores the necessary and appropriate balancing of planning issues related to preserving heritage while enabling intensification. One tempers the other, on a range of scale from full heritage protection, with no change and thus no development, to maximizing development and losing all heritage attributes. Here, the Tribunal finds that a

balanced solution is achievable that retains two heritage dwellings while also facilitating a desirable mixed-use building which helps meet today's needs.

[5] In many ways, this Decision reflects the existing conditions of the site, where an active flower and landscape business operates successfully within and around the heritage houses. The proposed mixed-use of the site can achieve the same result: necessary and desired commercial and residential uses can thrive within, around, and benefit from, the two heritage structures. Such co-existence enables the Town to address the future without forgetting the past.

[6] The Tribunal finds a "middle ground" here between the opposing views of the Applicant and the Town, not in an effort to compromise, but in accordance with heritage and intensification policies at every level: provincial, regional and local. Conserve heritage while intensifying development.

PROCEDURAL MATTERS

[7] The Parties agreed that these matters are being heard together, and that the witnesses will direct their evidence to the appeals and issues of relevance to their expertise.

[8] At the outset of the hearing, Kevin Pirak, Counsel for the added Party of Burgess Heritage Group Inc. ("Burgess"), advised that Burgess's issues were related only to servicing which have now been addressed, and that Burgess requests to be released as a Party and granted Participant status. With the consent of the Applicant and the Town, the Tribunal withdrew Burgess's Party status and granted it Participant status.

[9] At the request of the Parties on the first day of the hearing, the Tribunal adjourned the hearing until day three to allow the Town to consider recent revisions to the Applicant's development plans intended to address certain issues of the Town. Although the revised plans addressed certain issues in part, they resulted in no change to the Town's overall

position. The Parties agreed that the hearing would proceed with reference to the revised plans, as they now represent the Applicant's proposed development.

APPLICATIONS

[10] This corner site is a 0.89 hectare property extending 120 metres ("m") along the north side of Main and 52 m along the west side of Wentworth Drive ("Wentworth"), within an area designated as Neighbourhood Commercial ("NC") in the Town's Official Plan ("TOP").

[11] The NC designation, including this site, is: somewhat centrally located within the east half of Grimsby's built area; surrounded by extensive residential development; and adjacent to the West Lincoln Memorial Hospital ("hospital"). The site at issue here is 300 m west of the hospital.

[12] The Applicant's revised plans for the site include the following features as displayed in Exhibit 3, p. 90:

- a six-storey, mixed-use building shaped like an elongated "H" in plan view;
- retail uses at grade in the southeast wing near the street, office uses at grade within the east wing and toward the centre of the building, and a total of 201 residential units on the west half of the ground floor and on all floors above;
- retention of the façade of 147 along with the front two to three metres of that dwelling (the "façade"), and the complete removal of 141;
- building setbacks above the third floor at each of three wings (northwest, southwest and southeast);
- pedestrian access and landscaped open space within the larger setback from Main of the central portion of the building (considered the building's "front"); and

- vehicular access from Wentworth to below-grade and surface parking at the “rear” of the building.

[13] The Applicant requests the Tribunal to make the following decisions:

- Approve the OPA to permit on this site, within the existing NC designation, “dwelling units at or above the first storey” and to require that “the lot area ... shall be a minimum of 0.8 hectares;”
- Approve in principle the draft ZBA, and withhold the final Order pending the ZBA final form to the satisfaction of the Applicant and the Town;
- Approve in principle the demolition permits for 141 and 147, and withhold the final Order pending the final form of conditions for commemoration to the satisfaction of the Applicant and the Town; and
- Recommend to the Town that it withdraw the NOID for 141 and 147 because the cultural heritage value will be conserved through the conditions for demolition and through a site plan application (“SPA”).

STATUTORY REQUIREMENTS

[14] The appeals in this case invoke both the *Planning Act* (“Act”) and the *Ontario Heritage Act* (“OHA”).

Planning Act

[15] In making a decision under the Act for the OPA and ZBA, the Tribunal must have regard to matters of provincial interest as set out in s. 2. Under s. 2.1(1), the Tribunal must also have regard to any decision Town Council made under the Act that relates to the same planning matter, and the information considered by Town Council in making those decisions.

[16] Under s. 3(5), the Tribunal's Decision on the OPA and ZBA must be consistent with the Provincial Policy Statement, 2020 ("PPS"), and must conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 ("GP"), in effect at the date of this Decision.

[17] Under s. 17(34.1), the OPA must conform with the Region of Niagara Official Plan ("ROP"). As an amendment to the Town Official Plan ("TOP"), the OPA need not strictly conform with the TOP but may be evaluated against the TOP's purpose and intent, including policies pertaining to OPAs. Under s. 24(1), the ZBA must conform with the TOP, as amended.

Ontario Heritage Act

[18] The OHA governs decisions on a NOID and decisions on applications for demolition, removal or alteration to an identified heritage attribute.

[19] With the 2021 amendments to the OHA, O. Reg. 385/21 includes transition rules in s. 18, directing that a NOID published before July 1, 2021 shall proceed in accordance with the OHA as it read on June 30, 2021 (the "former OHA"). Therefore, the NOIDs in this case, having commenced in January 2021, remain subject to the process in the former OHA whereby the Tribunal, after holding a hearing, makes a Recommendation to the Town on whether the property should be designated (former OHA s. 29(12)). The Town may then pass a by-law designating a property or may withdraw the NOID (former OHA s. 29(14)).

[20] Similar transition rules apply to an application to alter or demolish a heritage attribute, per O. Reg. 385/21 s. 18(3)(e) and (f). The Applicant appealed to the Tribunal in April 2021 its two applications to demolish heritage structures, resulting again in the application of the former OHA. However, the former OHA was similar to the current OHA wherein the Tribunal is authorized to render a Decision whether to dismiss the appeal or

direct the municipality to grant the demolition permit, subject to any specified terms and conditions (former OHA, s. 34.1(6)).

[21] The Parties acknowledge that under OHA s. 30(2), on the issuance of a NOID, a property is considered designated under the OHA, until and unless the NOID is withdrawn by the Town after considering the Tribunal's recommendation. This provision invokes the designation when considering applications for alteration, demolition or removal. The Parties' submissions simply ask the Tribunal to allow or dismiss the OHA appeals, without seeking a sequence of recommendation, then decision. The Tribunal is satisfied that, when hearing these matters together, it may make a recommendation on a NOID while also making a decision on demolition. These determinations (i.e., recommendation and decision) are anticipated to be aligned and consistent.

WITNESSES

[22] The Tribunal affirmed and qualified seven professional witnesses to provide opinion evidence in their field of expertise noted below:

For the Applicant:

- Scott Catton, transportation engineering
- Andrea Sinclair, urban design
- Dan Currie, heritage conservation
- David Aston, land use planning

For the Town:

- Julia Rady, heritage conservation
- Catherine Jay, urban design
- Allan Ramsay, land use planning.

SUMMARY POSITIONS

[23] The issues of this case focus on the conservation of heritage resources and the appropriate scale of development, including height, density and setbacks related to small town character.

[24] The Applicant seeks to build out this site at a scale and intensity it considers suitable for a commercial area on Main, while providing pedestrian-oriented, live-work opportunities, and sufficiently commemorating or preserving certain heritage attributes.

[25] The Town does not oppose a mixed-use building within the NC designation, but seeks to preserve 141 and 147 while allowing for a more limited scale of development along Main, given the adjacent neighbourhoods and the higher-density opportunities in the Town's two Major Intensification Areas ("MIAs").

[26] The positions of the Parties are generally summarized as follows.

Applicant's Position

[27] The Applicant seeks the decisions and recommendation noted above, arguing that the proposed six-storey, mixed-use building represents suitable intensification on an under-utilized greyfield site. The plans will substantially contribute to a mixed-use, live-work, walkable community along this main street, with convenient access to commercial uses and the hospital, including the hospital's redevelopment which is commencing. The site's heritage attributes will be conserved through the retention of the façade of 147, and through the appropriate commemoration of 141 and 147, as well as the long-running Cole's Florist business ("Cole's"), operating on this site today but dating back to the late 1800s when located across Main from the site.

[28] The Applicant argues that the initiation of a proposed Hospital Secondary Plan, as recommended by Region and Town staff but terminated by Town Council, underscores

why intensification is appropriate in this area and at this site. This site will provide potential housing for hospital staff, housing for residents close to the hospital, and commercial and office space available for medical-related businesses, and other business and services, all within a short walk to and from the hospital and the area's stores and services. The Applicant also notes that the Region's Transportation Master Plan identifies Main for future transit, and while no timeframe is known, these future plans support intensification occurring at this site.

[29] The Applicant submits that small town character is supported by this stepped, mid-rise building at this suitable site, in comparison to tall buildings which are directed to the MIAs. Other large floor-plate, mid-rise buildings exist or are planned in the Town, including the nearby hospital and its redevelopment, and the apartment building and retirement home at Main and Bartlett Avenue, all which exist within and contribute to the existing small town character. At this site, the building will comply with the 45-degree angular plane, will not produce adverse shadow impacts, and generally reflects the setback to residential areas as sought by the TOP.

[30] The Applicant asserts that this proposal balances the inherent tension in the TOP's requirements for larger setbacks along Main while also requiring commercial uses to be close to the street. These requirements are represented by the building's east and west wings being close to the street, including commercial uses in the east wing, while setting back the building's central axis reflecting the historic setback of 141 and the retained façade of 147.

[31] In lieu of designation under the OHA, the Applicant intends to conserve the site's heritage value by retaining the façade of 147, along with appropriate commemoration for 141, 147 and Cole's, through proposed conditions to the demolition permits, including through SPA requirements. The Applicant argues that the OHA and the PPS enable some release of heritage resources through provisions for alteration or demolition combined with mitigation measures which conserve heritage values or interests. To that end, the Applicant suggests that Dr. Rady's recommendations can be reasonably addressed

through commemoration and retaining the façade of 147, including the story of early tender fruit farming and the architecture of the farm dwellings. The Applicant submits that its necessary SPA will provide for appropriate views to 147 from Main, and will enable further consideration of a potential front-yard greenhouse in reference to the history of Cole's. The Applicant also submits that the demolition conditions for 141 should include the option of relocation, should that become feasible.

Town's Position

[32] In opposition to the development, the Town requests the Tribunal to dismiss the appeals under the Act and thereby not approve the OPA and ZBA, and to dismiss the appeals under the OHA for the demolition permits and the NOIDs. To the latter request, the Tribunal interprets that the Town seeks a recommendation from the Tribunal to designate 141 and 147 under the OHA, in accordance with the process under the former OHA as described under Legislative Requirements above.

[33] The Town explains that it is not opposed to redevelopment of the site in principle, but that the proposed building is too large, in height, length, and density, for a development in this commercial area of Main and adjacent to a stable residential neighbourhood. It is better suited to, and would be permitted in, the Town's MIAs. The mostly residential function of the building fails to represent the intended function of the NC designation. To heritage, the Town argues that the almost complete removal of two heritage buildings should not occur.

[34] The Town argues that the oversized building would neither reflect the existing character of Main nor the small town character of low-rise, modest-scale development. With retail and office space limited to only a part of the main floor, it represents only 5% of the building's entire floor space and only a portion of the main floor within this commercial area. Regional transit along Main is but a concept at this time, with no plans for public transit throughout the Town, except for the GO Station for which construction has commenced.

[35] The Town refers to this NC designation as following the ROP policies for a hierarchy of commercial areas, serving nearby residential areas, and buildings close to the street. The TOP's two MIAs implement the ROP policy to direct a significant portion of growth to intensification areas, being the downtown and the node centred on the GO Station. The ROP does encourage intensification throughout built-up areas but at a suitable scale and character for the surrounding community.

[36] Under the TOP, this proposal fails to conform with the NC designation, compatibility and growth management policies. It fails to satisfy the Vision for small town character and cultural heritage. As a large, central property within the NC designation, the site is suitable for commercial uses serving the broader community, including the hospital. Unlike other areas, the NC designation is not identified for large mixed-use buildings.

[37] The TOP already incorporates the ROP intensification target of 80%, and the new ROP target of 98%, when in force, will be addressed in the TOP through a comprehensive review. Relying on that target for this site-specific proposal is premature and circumvents a full public process. This development represents one year of current projected growth for the Town.

[38] The Town finds the building too long, with negative effects on the character of Main, the surrounding neighbourhoods, and across the Town. The ground floor requires an active frontage through a function of setbacks, access and landscaped space. A more vibrant streetscape may be achieved through a redesign of the site to include more than one building to address matters of heritage, commercial uses, and access.

[39] To heritage matters, the Town argues that since the heritage experts agree that 141 and 147 satisfy the criteria for designation in O. Reg. 9/06, and since the OHA requires these properties to be treated as already designated, the focus is whether they should be demolished. Their near complete removal does not constitute sufficient conservation under the PPS, ROP and TOP. Demolition should be a rare exception. These dwellings contribute to the identified Scenic Heritage Highway, early tender fruit farming, and

architectural variations, as does 133, the designated property abutting to the west of the site.

AGREED FACTS

[40] The Parties' agreed facts and opinions, as filed in advance of the hearing or clarified during the hearing, include the following:

- 141 and 147 represent and constitute heritage attributes which establish their cultural heritage value or interest ("CHVI") worthy of designation in accordance with O. Reg. 9/06 and the OHA.
- The site is a greyfield within the built boundary, being where planning policies at all levels direct intensification to occur, subject to locational compatibility. Mixed-use development is an appropriate use for this site in support of a complete community within the NC designation, visually fronting onto Main, close to the hospital being a public service facility, and next to, but not within a stable residential area.
- To population growth, the GP and the recently adopted, but not in force, new ROP, establish higher population and employment targets than contained in the TOP. The in-force TOP directs that 80% of new dwellings occur through intensification, whereas the new ROP increases that objective to 98%. These are minimum targets such that general achievement across the Town, including within MIAs, would not prevent suitable intensification elsewhere within the built area.
- Outside the two MIAs, being the downtown and the GO Station area, the vast majority of Grimsby consists of stable residential areas.

- Matters of servicing, transportation and parking are not at issue, having been resolved between the Parties.

ISSUES and FINDINGS

[41] The primary issues relate to the protection of heritage features and the compatibility of the development within the NC designation and adjacent to a Residential designation to the north.

[42] The Tribunal finds on the evidence that the following policies addressed by various witnesses are more suitably upheld by the retention of 141 and 147 in substantial form, rather than their near complete removal and associated commemorative efforts. The Tribunal also finds that a six-storey, mixed-use development is appropriate for this site, as tempered by various design features, to be suitable for Main and compatible with adjacent residential uses. Changes to the site and building design will be necessary based on the Tribunal's findings on heritage.

[43] The policies are reviewed first, followed by the findings on evidence. Policy directions found to be particularly instructive in this case are underlined.

[44] Key terms are defined in the PPS, including for heritage conservation relevant to this case. "Built heritage resource" refers to a property's CHVI which may be designated under the OHA or included on a municipal heritage register. "Conserved" means retaining the CHVI of built heritage resources, which may include the recommendations of a Heritage Impact Assessment ("HIA"), including mitigative measures, as accepted by the decision-maker. "Heritage attributes" are elements that contribute to a protected heritage property's CHVI. "Protected heritage property" is that designated under the OHA. "Significant" includes resources of CHVI based on criteria established under the OHA.

[45] The PPS, s. 1.7 directs that:

1.7.1 Long-term economic prosperity should be supported by: ...

- b) encouraging residential uses to respond to dynamic market-based needs and provide necessary housing supply and range of *housing options* for a diverse workforce;
- c) optimizing the long-term availability and use of land, resources, *infrastructure* and *public service facilities*; ...
- e) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*; ...

[46] The PPS Cultural Heritage and Architecture policies of s. 2.6 include:

- 2.6.1 *Significant built heritage resources and significant cultural heritage landscapes shall be conserved.* ...
- 2.6.3 Planning authorities shall not permit *development* and *site alteration* on *adjacent lands* to *protected heritage property* except where the proposed *development* and *site alteration* has been evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be conserved.
- 2.6.4 Planning authorities should consider and promote archaeological management plans and cultural plans in conserving cultural heritage and archaeological resources. ...

[47] The GP contains policies reflecting the foregoing directions of the PPS, including the achievement of complete communities (s. 2.2.1.4 and s. 2.2.6.2), and to provide a range and mix of housing options (s. 2.2.6.1.a). The GP s. 4.2.7.2 directs municipalities to work with stakeholders to develop and implement official plan policies related to cultural heritage resources. Of particular relevance in this case is s. 4.2.7.1:

- 1. *Cultural heritage resources will be conserved* in order to foster a sense of place and benefit communities, particularly in *strategic growth areas*.

[48] The GP definition of strategic growth areas refers to areas identified by municipalities as a focus for intensification, including greyfields. Greyfields are defined as underutilized, often former commercial properties.

[49] Along with other relevant ROP policies, key themes and directions of the ROP are established by the following sections (summaries, not quotations):

3.D Commercial Areas

- 3.D.5 and 3.D.6 - promote the redevelopment of greyfields and commercial areas into mixed-use areas;
- 3.D.7 - promotes a main street form of commercial development with facades closer to the street, an efficient use of land, and a mix of uses;
- 3.D.8 - neighbourhood commercial activities are an integral part of residential areas;
- 3.D.10 - assess redevelopment in relation to community character within existing or proposed neighbourhood fabric, including scale, orientation relative to adjacent uses, and compatible with housing;

4.A.1 Growth Management Objectives

- 4.A.1.2 - directs growth to built-up areas through intensification;
- 4.A.1.3 - directs intensification to areas so designated by local municipality;
- 4.A.1.6 - build communities that are compact, mixed use, and support transit and active transportation;
- 4.A.1.7 - reduce dependence on the automobile;
- 4.A.1.10 - provide a framework for complete communities including a diverse mix of land uses, a range of employment and housing types, high quality public spaces, and easy access to stores and services via automobile, transit and active transportation;

4.C Intensification

- 4.C.1.1 - intensification includes all forms of development within the Built-up Area;
- 4.C.2.1b - intensification throughout the Built-up Area is generally encouraged;
- 4.C.2.1c - identify specific intensification areas including downtowns, nodes and greyfield areas;
- 4.C.2.1d - plan the above areas for a significant portion of population and employment growth, relative to the shape and character of the community;
- 4.C.2.1e - a diverse mix of uses in proportions dependent on area characteristics and the intended critical mass of residential development;

4.G.1 Niagara's Urban Community Objectives

- 4.G.1.1 - sustainable, complete communities;
- 4.G.1.7 - promote the preservation and enhancement of cultural heritage resources;

4.G.5 Niagara Region's Urban Structure

- 4.G.5.1 - the key components of urban structure include locally designated Intensification Areas and Transportation Corridors (includes major roads);
- 4.G.5.2 - other key determinants defining and shaping urban structure include major community facilities such as hospitals;

4.G.11 Local Municipality Designated Intensification Areas

4.G.11.2 - municipalities will define intensification areas in local official plans for intensification and redevelopment pursuant to the policies of s. 4.C.2;

4.I Mixed Use Areas

4.I.1 - encourages the development of mixed use areas;

4.I.2 - accommodate a variety of housing types, with emphasis on medium and high density residential development;

4.I.3 - allow mixed use areas at several scales, including neighbourhoods, blocks, parcels and buildings;

4.I.7 - provide an attractive streetscape environment and public realm.

[50] Through the TOP's similar approach, key themes and directions are framed by the following sampling of policies (summaries, not quotations unless so marked):

2.0 Municipal Structure

- applications for new uses can be evaluated for their conformity with the broad structural policies and guidelines of the Plan;

2.1 The Vision

"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. Grimsby's natural heritage, cultural heritage, and arts will be celebrated and protected. The existing urban settlement area of Grimsby will be intensified in a few key areas while respecting the small town character and cultural heritage of the Town. Small-scale infill will be promoted in other parts of the urban settlement area but will be sensitive to the surrounding housing character. ..."

2.2 Municipal Structure Principles

2.2.9 - ensure a wide range of housing types and locations;

2.2.11 "Promote efficient *development* and land use patterns which minimize land consumption through compact *development in areas best able to accommodate it*."

2.2.16 "Promote an urban structure that is less dependent on cars, and encourages alternative modes of transportation ..."

2.2.23 "Protect the small town character and feel of Grimsby."

2.2.27 "Protect Grimsby's cultural heritage."

[51] The above directions of the TOP are elaborated through numerous policies, including the following sections in dispute in this case:

2.3.2 The Urban Settlement Area – Policies

- 2.3.2.1a "... Any development within the built boundary is considered intensification and contributes to the intensification target of this Plan;
- 2.3.2.1d "Major *intensification* areas represent two areas where the majority of *intensification* will be directed;
- 2.3.2.1f - stable residential neighbourhoods "... are intended to remain stable with change that is in keeping with the established character of the neighbourhoods."
- 2.3.2.6 - the two major intensification areas "... will be the primary focus for *intensification* ..."
- 2.3.2.10 - within stable residential neighbourhoods, "... infill and *intensification* may be permitted where it respects the scale and built form of the surrounding neighbourhood ..."

- 2.4 Growth Management – Policies

- 2.4.6 - to achieve the 80% intensification target, infill and intensification are encouraged throughout the built-up area; with the majority directed to the two major intensification areas; also permitted within stable residential neighbourhoods at a scale and built form that reflects the neighbourhood;

- 2.5 Housing – Policies

- 2.5.5 - infill and intensification "... shall consider the impact on adjacent residential uses including overlook and shadowing, the character of the surrounding area and the need for a transition in heights and densities adjacent to existing residential uses ..."

- 3.4.7 Design Policies for Residential Neighbourhoods

- 3.4.7.8 - apartment buildings should front and face the road at a minimum setback; buildings taller than 4 storeys are to be set back from low or medium density residential areas according to the specified angular plan; and within 25 m of the property line, not more than 2 storeys taller than adjacent development;

- 3.6.1 Neighbourhood Commercial Area

- 3.6.1.1 - permits a range of uses including retail, restaurants, medical clinics and offices;
- 3.6.1.2 - intended to serve the daily and weekly needs of surrounding residents while not usurping the function and range of uses in the Downtown;
- 3.6.1.5 to 3.6.1.9 – adequate parking, setbacks, fencing and landscaping to buffer adjacent residential uses;

- 7.3 Main Street

- 7.3.1 - outside the Downtown, require larger building setbacks to maintain the existing streetscape character;

- 8.0 Cultural Heritage and Archaeology

- 8.1 "The Town shall encourage the preservation of buildings and sites having historical and/or architectural value or interest and significant cultural heritage landscapes."

- 8.1a "... Protection, maintenance and stabilization of existing cultural heritage attributes and features over removal or replacement will be adopted as the core principles for all conservation projects."
- 8.7 "The (heritage) register may include *built heritage resources* that have not been designated but that the Town believes to be of cultural heritage value or interest."
- 8.15 - the Town's priorities to undertake heritage plans and programs include "b) the protection of the Main Street corridor."

[52] Governing the Tribunal's review is that its Decisions and Recommendations are guided by the legislative requirements, including: regard for provincial interests; consistency with the PPS; conformity with the GP; and conformity with the ROP. As argued by the Applicant and agreed with here, the OPA should consider the high-level intentions of the TOP, but need not conform with every policy of the TOP. As a sought amendment, the OPA addresses a matter not explicitly allowed by the TOP, here being a substantial mixed-use building within the NC area.

Heritage Conservation

[53] The Tribunal finds that the outcome of this case turns first on the issue of heritage conservation, which then affects the outcome of the second issue, being suitable use and scale. The Parties disagree on how best to conserve heritage at this site, while they agree that some form and scale of intensification, including residential uses, are appropriate within this commercial area. The heritage outcome will fundamentally influence the form and scale of new development.

[54] The Tribunal prefers the Town's intention, with the support of Dr. Rady's evidence, to designate 141 and 147 under the OHA and retain these dwellings as representative contributors to the heritage of and along Main, including early farm dwellings and their associated tender fruit farms that occupied relatively narrow, small, farm lots along Main.

[55] The Town's NOIDs for 141 and 147 have the effect of designating these properties, at least temporarily. For the purpose of this hearing and Decision, those dwellings are designated and protected under the OHA. The heritage witnesses both confirm that these dwellings display more than one CHVI worthy of designation.

[56] To allow the proposed development, the Tribunal must find on the evidence, that 141's commemoration is sufficient to warrant the building's demolition, and that 147's retained façade and associated commemoration warrant its substantial removal and its façade incorporated into the new building. For the reasons below, the Tribunal finds the foregoing tests to not be met and will therefore disallow demolition and recommend that the Town designate these properties under the OHA.

[57] Contributing to the Tribunal's findings are the following facts obtained in evidence from Dr. Rady and Mr. Currie. The Town's 2015 report of Grimsby's Special Places identifies 39 cultural heritage landscapes, including all of Main Street as a Scenic Highway Heritage Route used by indigenous people and early settlers, including through the War of 1812, and later as the route of the Hamilton-Grimsby-Beamsville Electric Railway. Both dwellings on site are listed in the Town's Heritage Registry. The Applicant completed HIAs for 141 and 147 in 2019. In February 2021, the Town issued NOIDs for 141 and 147. In September 2021, the Town initiated a Main Street East Heritage Conservation District Study ("Main Street East HCD Study"), which is currently underway.

[58] Both 141 and 147 contain design and physical heritage value: 141 is circa 1910 Queen Anne Revival style with Craftsman influences; 147 is circa 1910 vernacular Italianate style. Both dwellings have contextual value as functionally related to the history of fruit farming. The dwelling at 133, abutting this site to the west, is designated under the OHA for reasons similar to 141 and 147, has a similar setback from Main as the dwellings on this site, and is proposed to be retained and restored when a new building is constructed behind and beside 133's designated dwelling.

[59] Both heritage experts agree that demolition is considered a last resort. Mr. Currie acknowledged that heritage context relates to what is present today and that a demolished building would reduce the overall context. Such reduced context would become the relevant reference for the next heritage request or decision. Mr. Currie also acknowledged that, as an example, retaining the façade of 141, as is proposed for 147, would result in less impact on heritage resources.

[60] The Tribunal disagrees with Mr. Currie's conclusion where, despite the above acknowledgements, he considers the proposed heritage impact as reasonable due to previous developments and changes along Main, especially within the immediate area of this site. He considers contextual value to exist only between 141 and 147, one to the other, with no effect, for example, on 133 to the west.

[61] The Tribunal prefers the evidence of Dr. Rady in that contextual value engages Main as a whole, where the history of fruit farming is displayed by numerous houses along Main, ranging from those of early, wealthy landowners to those of working fruit farmers. As Dr. Rady opined, such dwellings should be retained as "visual touchstones of Grimsby's past" which enable one to "read the historic streetscape" for past fruit farming and present contrast with the Town's gradual development. Dwellings such as these are "characters in the socio-economic story" and "ideally as many as possible is better than fewer." The Tribunal finds that it is the sum of the parts, being each heritage house, that collectively tell the story of the area's history.

[62] The Tribunal agrees with Dr. Rady's emphasis that "demolition should be a last resort" and is not necessary here to enable the moderate intensification of this large site for mixed-use. The Tribunal finds that incorporating both of these dwellings within a redevelopment plan would achieve warranted heritage conservation while the policy objectives for commerce and housing are also addressed.

[63] The TOP s. 8.1a implements provincial and regional planning documents when it establishes the core heritage conservation principle of preservation being preferred over removal or replacement.

[64] Akin to the cliché of "a picture is worth a thousand words," the very presence and frequency of these heritage dwellings display the story of early settlement and tender fruit farming along Main. While additional commemoration will provide a deeper understanding, the history displayed so effectively through attribute preservation is the reason this option is preferred and why demolition remains the rare exception. Contrary to the Applicant's

suggestion that several other listed or designated properties along Main reduces the heritage loss of removing 141, the Tribunal finds that the number, rhythm and repetition of these dwellings carry strong potential as a collective heritage attribute, as is now being considered in the Town's Main Street East HCD Study. Whether or not such HCD proceeds, the positioning of 141 and 147, in step with 133, effectively reflect this area's history worthy of protection.

[65] To the Parties' submissions on cited Tribunal and Court cases, the Tribunal observes that those decisions reflect the balancing of planning considerations relative to each site and application. Some result in the removal or alteration of a heritage structure while others retain all heritage attributes intact. The Tribunal finds the observations of OMB Member M. C. Denhez, at paragraph 82 in *ADMNS Kelvingrove Investment Corp. v. Toronto (City)*, 2010 CarswellOnt 2164, as upheld by the Divisional Court, to be broadly applicable and confirmed by the heritage planners here:

... in the OHA ... 'the conservation, protection and preservation of the heritage of Ontario' ... is the general rule ... and demolition the exception.

[66] The Tribunal will deny the requested demolition permits and recommend that the Town designate 141 and 147 by by-law under the OHA. Their heritage attributes should include a primary emphasis on early fruit farming as advised by Dr. Rady, and include the suggested corrections of certain facts raised by Mr. Currie.

[67] The Tribunal finds that any re-positioning of either 141 or 147 on the site is unlikely to be needed in a redesign, given 141's close proximity to the west lot line and the opportunity for new development on both sides of 147. Their preservation in place will maintain setbacks from Main and influence a final plan based on good urban design for intensification. This Interim Decision will not permit demolition and will direct the Parties to draft final OHA permits and conditions for such matters as removal of non-heritage additions, appropriate restoration of heritage attributes, and any related commemoration.

Intensification

[68] All witnesses agree, including from a heritage conservation perspective, that this site is suitable for some level of mixed-use intensification based on several positive factors: a large greyfield site with extensive frontage on Main; located at the intersection of Main and Wentworth; centrally located within the NC designation with commercial or mixed uses to the east, west and south; public service amenities nearby including the hospital, parks and the elementary school; and general agreement that intensification, at some compatible scale, constitutes good planning.

[69] To building size and density, the Tribunal prefers the evidence of the Applicant's witnesses. Intensification is encouraged throughout the built-up area by policies at all levels, including TOP s. 2.4.6. While specific direction for intensification is not included in the TOP for the NC designation, the TOP directs that scale respect "small town character" (s. 2.2.23) and the "surrounding neighbourhood" (s. 2.4.6).

[70] The Tribunal finds that intensification at the scale proposed here is warranted, subject to necessary modifications arising from the heritage findings of this Decision. In accordance with the policy directions, this development will: add substantial commercial and office space within the NC designation; diversify the housing supply with apartment units within a surrounding neighbourhood of townhouses and detached dwellings; provide live-work opportunities with the nearby hospital and other employers; and support a safe, walkable community with more people and "eyes on the street."

[71] Subject to compatible scale reviewed below, the Tribunal accepts Ms. Sinclair's opinion that, given this main street commercial area, a building in the height range as proposed does not detract from the small town character of Grimsby. It represents a compatible gradation to the north, from higher height and density here, to lower townhouses and then detached dwellings beyond.

Compatibility

[72] The debate on compatibility relates to certain TOP policy directions: commercial buildings along Main to be close to the street; setbacks to respect those of heritage buildings; and suitable gradation to adjacent residential uses.

[73] On the evidence of Ms. Sinclair, as corroborated in part by Ms. Jay, the Tribunal finds that portions of the building, in final design, can bring commercial uses close to the street, potentially in the form of the current concept plan adjacent to the Main-Wentworth intersection. With the retention of heritage buildings, other portions of the building such as between the heritage structures, should maintain the larger historic setback, again not unlike the current concept. Ms. Jay acknowledges that if the redevelopment is approved abutting to the west of the site, it represents how the varying setbacks of a five-storey building can address both heritage and commercial considerations. The Tribunal agrees with Ms. Sinclair and Mr. Currie, that it is not unusual for oblique views along a street to be concealed temporarily by buildings or parts thereof as one moves along the street. This finding supports the design component of the east end of the building at a minimum setback from both Main and Wentworth.

[74] The Tribunal finds the proposed gradation to residential uses to the north to adequately reflect the policies of the TOP. The Parties agree there are no shadow issues. The final design should generally conform with the TOP's requirement for angular planes and a 25 m setback for storeys 5 and 6, with some exception reasonable for that part of the building adjacent to the townhouse parking area abutting the northeast corner of the site.

[75] The TOP defines "compatible development" as:

development that is not necessarily the same or similar to development in the vicinity, but it is development that improves the character and image of an area, without causing any undue, adverse impacts on adjacent properties.

[76] The Tribunal finds the general scale and massing of the building to constitute compatible development. Of interest, is that the definition prohibits “undue” impacts, which the Tribunal surmises does enable consideration of “due” impacts. It is accepted that abutting neighbours to the north may prefer a lower building height as visible across their rear yards. However, such perception of adverse impact may be “due” – that is, warranted – in the reasonable pursuit of mixed-use intensification within a suitable area such as this NC designation and greyfield site. Similar adjacency between residential and commercial uses exists with the plaza immediately east of the site, where its rear wall and service lane are close to the lot lines of neighbouring dwellings.

[77] As the urban design experts agree, the area includes other relatively long, large-floorplate buildings to the site’s east and south, including for commercial, residential or hospital use. While the site could accommodate more than one building, as Ms. Jay suggested should be explored, the Tribunal finds that a well-designed single building is capable of demonstrating suitable conformity with policies regarding heritage, commercial use, and small town character. The plans for this site reflect these considerations and may be pursued in final designs, again with necessary changes arising from the Tribunal’s heritage findings. This finding does not prevent the Applicant from redesigning for more than one building if considered necessary given the heritage buildings on the site.

[78] Based on the foregoing findings, the Tribunal’s guidance to the Parties’ pursuit of final design is set out at the end of this Decision.

Statutory Requirements

[79] Mr. Aston and Mr. Ramsay rely on their Parties’ respective heritage and urban design evidence, leading to their opposite conclusions on conformity and consistency under the requirements of the Act. As reviewed earlier, a fundamental issue arises from the TOP’s Vision. It says:

... Grimsby will be intensified in a few key areas while respecting the small town character and cultural heritage of the Town. Small-scale infill will be promoted in other parts of the urban settlement area but will be sensitive to the surrounding housing character. ...

[80] Mr. Ramsay reads the TOP as focussing intensification in the MIAs and permitting small-scale infill elsewhere. He recommends a lighter scale of intensification at this site, with lower height, less density, and more three-bedroom units.

[81] The Tribunal makes two observations in support of its finding that intensification at the general scale proposed here by the Applicant is acceptable. First, it is clear that the Town, through the TOP, considers the scale of development permitted in the MIA in the vicinity of the GO Station as not detracting from Grimsby's small town character. Existing and permitted development there includes numerous tall buildings containing high residential densities. This site's development is much smaller and is considered medium scale by the witnesses. Second, small-scale infill is permitted in other parts of the Town provided it is sensitive to the surrounding housing character. While a medium scale here, the Tribunal finds compatibility with adjacent residential areas. As a result, this site exemplifies both of these visions: the NC designation is a suitable "key area" for intensification, while constituting a scale that respects surrounding uses. Should the Parties consider it necessary, the final OPA wording may reference permission for medium scale development on this site.

[82] This development, not unlike buildings to the east at Bartlett Avenue or proposed on the abutting lot to the west of this site, represents sought intensification on a greyfield site, adds apartments to the area's mix of housing types and sizes, supports a more complete community with live-work opportunities, reduces reliance on automobiles, and will support transit on Main, if or when that occurs.

[83] The Tribunal finds that, subject to the heritage findings, the proposed development on this site has regard for Provincial interests, is consistent with the PPS, conforms with the GP, conforms with the ROP, and appropriately implements the TOP via this OPA. The Tribunal has had regard for the matters considered by the approval authorities related to

these appeals, and has duly considered the several Participants' lengthy and detailed submissions.

[84] Through this Interim Decision, the Tribunal grants the OPA and ZBA appeals in part, with direction to finalize their content in due course based on further revised plans as necessitated by the heritage matters.

Guidance for Next Steps

[85] Leading from the heritage and planning findings of this Decision, the Tribunal directs that revisions to the plans, OHA permits, OPA and ZBA generally satisfy the following:

- permit medium-scale development on this site in the OPA (if considered necessary by the Parties);
- between 141 and 147, maintain the proposed setbacks along Main, being somewhat deeper than the setbacks of the heritage structures;
- provide sufficient sidewall setbacks from the heritage structures to maintain their detached appearance;
- the new building may be close to or connect with the rear walls of 141 and 147;
- include similar setbacks and stepbacks as proposed for the northwest and southeast wings;
- commercial/office space should dominate those parts of the ground floor that face Main or Wentworth, and result in a substantial portion of the total ground floor in commercial/office space, while also providing visible residential access and the permitted residential occupancy of the northwest wing's ground floor.

- other alterations and minor deviations to the above as agreed to by the Parties and in keeping with this Decision.

[86] To conclude, the stories of tender fruit farming and of Main Street are better conserved and told by the sequence and repetition of early farm houses telling their story by their physical presence and any associated commemoration. Less history and learning are conveyed with fewer remnants of early days of settlement. The retention of such houses along Main not only conserves heritage but also helps retain the small town character of Grimsby while necessary and compatible intensification occurs in an appropriate location amidst them.

INTERIM ORDER

[87] Pursuant to s. 29(12) of the *Ontario Heritage Act* as it read on June 30, 2021, the Tribunal Recommends that the Town of Grimsby designate, by by-law, 141 and 147 Main Street East to be of cultural heritage value or interest, with consideration to including those matters contained in paragraph [66] of this Decision.

[88] Pursuant to s. 34.1(6) of the *Ontario Heritage Act* as it read on June 30, 2021, the Tribunal denies the Appellant's request for demolition permits affecting all or parts of 141 and 147 Main Street East ("Permits"), and leaves those applications open for the Parties to finalize the Permits and conditions for relevant matters, including those contained in paragraphs [67] and [85] of this Decision.

[89] Pursuant to s. 17(50) and s. 34(26)(b) of the *Planning Act*, the Tribunal: allows the appeals, in part; approves in principle an Amendment to the Town of Grimsby Official Plan and an Amendment to Zoning By-law No. 14-45 (the "Amendments"); and directs the Parties to prepare the Amendments in accordance with this Decision, including as contained in paragraph [85].

[90] The Parties may determine how best to incorporate this Decision's directions through the Recommended heritage by-laws and/or through the Ordered Permits and/or Amendments.

[91] The Parties are directed to submit the Permits and Amendments and to confirm compliance with this Interim Order within eight months of the date of this Decision. If unable to complete all documentation within that time, the Parties shall provide a written status report by that date and the expected timeframe to completion. A Party may request that the Tribunal convene a Case Management Conference in the event of difficulties satisfying this Interim Order.

[92] This Member will remain seized to review the Permits and Amendments and to consider issuance of the Final Order.

"S. Tousaw"

S. TOUSAW
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.