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File: Z-7856
Planner: M. Tomazincic

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING DIRECTOR, LAND USE PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: ZELINKA PRIAMO LTD 1235, 1237, 1245, 1247, AND 1253 RICHMOND STREET MEETING ON MONDAY, MARCH 26, 2012

RECOMMENDATION

That, on the recommendation of the Director, Land Use Planning and City Planner, the following report on the decision by the Ontario Municipal Board relating to the appeals by David Langill (on behalf of W.B.H. Somerset, London Inc.), Brad Bain (on behalf of Linda Brand), and John McNair (on behalf of Timbercreek Asset Management Inc and Homestead Land Holdings Ltd) relating to an application for an amendment to the Zoning By-law No. Z.-1 which was passed by Municipal Council concerning 1235, 1237, 1245, 1247, and 1253 Richmond Street, **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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March 28, 2011 – Zelinka Priamo Ltd. This report recommended the approval of the requested Zoning By-law amendment to add a Bonus Zone to the subject lands to permit increased height and density with reductions in setback requirements, landscaped open space requirements, and parking space requirements, and an increase the maximum lot coverage in exchange for certain urban design features.

July 18, 2011 – Zelinka Priamo Ltd. This report advised the Ontario Municipal Board that the Municipal Council has reviewed its decision made at its session held on April 4, 2011 relating to this matter and sees no reason to alter it.

BACKGROUND

On December 24, 2010, an application for a Zoning By-law amendment was submitted requesting that the subject site be rezoned to add a Bonus zone to permit an increase in height and density with reductions in yard setback requirements, landscaped open space requirements, and parking space requirements, and an increase the maximum lot coverage in exchange for certain urban design features. The purpose and effect of the requested amendment was to facilitate the development of an 18-storey apartment building with a total of 311, two-bedroom units and 174 parking spaces.

Planning Staff recommended that the requested Zoning By-law amendment be adopted with holding provisions to require that the proponents be required to present the proposed site plan at a public meeting and to ensure that the results of the Hydraulic Floodway Analysis are accepted to the satisfaction of the Upper Thames River Conservation Authority prior to development of the subject site. Council supported the Planning Staff recommendation and the requested Zoning By-law amendment was adopted on April 4, 2011.

On May 6, 2011, an appeal was submitted by David Langill, on behalf of W.B.H. Somerset London Inc, owners of 1209 Richmond Street, in opposition to Council's adoption of the requested amendment. In the reason for the appeal of Council's decision, the appellant states:

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The cumulative effect of these site specific zone regulations will result in a development that is significantly over built for the site and will result in serious parking and traffic problems in the immediate area. Further, we believe that the level of intensification being proposed is excessive in terms of the provisions for density bonusing as set out in the City's Official Plan.

We believe that the City currently enjoys sufficient jurisdiction through their Site Plan Control provisions to require a high quality of design for new development and that the level of density bonusing provided in this case is far in excess of what is warranted.

We feel that insufficient consideration was given to the cumulative impacts of these site specific regulations.

On May 9, 2011, an appeal was submitted by Brad Bain, solicitor for Linda Brand, owner of 1240 Richmond Street, in opposition to Council's adoption of the requested amendment. In the reason for the appeal of Council's decision, the appellant states:

The lands are within the floodway as identified on Schedule B2 of the City of London Official Plan. Section 15.6 of the Official Plan provides that where development is planned in the floodway an Official Plan Amendment must be obtained to designate the property as a "Special Policy Area". An Official Plan amendment should therefore be required.

The density bonusing is excessive. These increases are far too much for the site to handle

The application does not have regard for the Provincial Policy Statement or the UTRCA Environmental Planning Policies and is premature because the UTRCA has not received and reviewed the hydraulic floodway analysis.

The bonusing being recommended will have a significant impact on the traffic and character of the street in the immediate neighbourhood. A loss of privacy, shadowing and other unacceptable adverse impacts will also result.

Also, on May 9, 2011, an appeal was submitted by John McNair, solicitor for Timbercreek Asset Management Inc and Homestead Land Holdings Limited, owners of 1201, 1231, 1233, 1265, and 1267 Richmond Street, in opposition to Council's adoption of the requested amendment. In the reason for the appeal of Council's decision, the appellants state:

The proposed redevelopment of the subject lands constitutes an intensification of use which far exceeds the levels approved in the City of London Official Plan.

The proposed redevelopment fails to demonstrate benefit in the community and/or enhanced amenities that would justify the extent and range of amendments being sought.

The parking analysis carried out prior to approval of the rezoning application was inadequate and failed to establish that the substantial reduction in parking spaces was necessary or desirable.

The cumulative impact of all of the permitted changes to the existing zoning results in an extreme overdevelopment of the site and massing, the impacts of which on the Richmond Street corridor and the surrounding neighbourhood was not addressed by the applicant or the City of London.

A prehearing conference related to this matter was held on October 14, 2011. Prior to the commencement of the prehearing conference, a settlement had been reached between the applicant and the appellant Somerset London Inc and, as a result, their appeal had been withdrawn. As the prehearing conference commenced, the OMB was advised that settlements had also been reached between the applicant and the appellants Timbercreek Asset

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Management and Homestead Land Holdings Ltd resulting in the withdrawal of their appeals. As a result of these settlements and subsequent appeal withdrawals, the sole remaining appellant was Linda Brand and a date for OMB Hearing had been requested by all parties for the end of January 2012.

The OMB, with the consent of Counsel present, gave the following directions and Orders:

1. The Board Orders that a five day hearing by set to commence on Monday, January 30, 2012
2. No further notice is required
3. Counsel for the City of London is directed to confirm the venue with the Board office
4. The Board further directs Counsel for the parties to, on consent, submit a Procedural Order in the format prescribed by the Board no later than Friday, October 21, 2011
5. The Board further directs that the expert witnesses that the parties intend to call hold an expert's meeting no later than Wednesday, November 30, 2011 with the intent to identify any outstanding issues

As it relates to the latter 2 Orders, a Telephone Conference Call (TCC) was held on January 17, 2012 to determine why the Board's Orders had not been followed and to consider a motion by the applicant to dismiss the appeal. The appellant had advised the Board that she had dismissed her previous Counsel shortly after the prehearing conference and that she had not retained Counsel either for the TCC or for the OMB hearing scheduled to commence on January 30, 2012. After some consideration, the appellant advised the Board that she wished to withdraw her appeal. As a result, the Board Orders that the appeal of Linda Brand against Zoning By-law amendment Z.-1-112002 of the City of London is dismissed.

A copy of the OMB decision resulting from the Prehearing Conference on October 14, 2011 is attached as Appendix 1 to this report, and a copy of the OMB decision from TCC resulting from the motion to dismiss the appeal on January 17, 2012 is attached as Appendix 2 to this report.

PREPARED BY:	SUBMITTED BY:
MICHAEL TOMAZINCIC, MCIP, RPP PLANNER II, COMMUNITY PLANNING AND URBAN DESIGN SECTION	JIM YANCHULA, MCIP, RPP MANAGER OF COMMUNITY PLANNING AND URBAN DESIGN SECTION
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP DIRECTOR, LAND USE PLANNING AND CITY PLANNER	

March 12, 2012

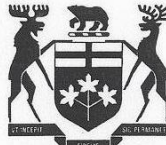
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Decision Report

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Appendix 1

ISSUE DATE:
October 18, 2011



PL110495

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

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Linda Brand
 Appellant: Timbercreek Asset Management Inc. and Homestead Land Holdings Limited
 Appellant: W.H.B. Somerset, London, Inc.
 Subject: By-law No. Z-1-112002
 Municipality: City of London
 OMB Case No.: PL110495
 OMB File No.: PL110495

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
2180040 Ontario Limited (Abode Varsity Living)	A..R. Patton
Timbercreek Asset Management Inc. and Homestead Land Holdings Limited	C. Reid student-at-law for John McNair
Linda Brand	F. Tranquilli
The City of London	J. Page

MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON ON OCTOBER 14, 2011 AND ORDER OF THE BOARD

This was a prehearing conference in the matter of appeals by Timbercreek Asset Management Inc., Homestead Land Holdings Limited, and Linda Brand from a decision of the Council of the City of London to pass Zoning By-law Amendment Z-1-112002 for properties known municipally as 1235, 1237, 1245 and 1253 Richmond Street.

The Amendment to the Zoning By-law is to change from Residential R9 (R9-7-H45) Zone which permits a range of residential and specialized apartment buildings up to a maximum height of 45 m and a maximum density of 150 units per hectare and a

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Appendix 1

Residential R9 (R9-7-H50) Zone which permits a range of residential and specialized apartment buildings and lodging houses up to a maximum height of 45 m and a maximum density of 150 units per hectare to a Residential R9 Bonus Zone which would permit a maximum height of 55 metres and a maximum density of 450 units per hectare.

The purpose of the amendment is to facilitate the development on the subject lands of an 18 storey apartment building with a total of 311 two bedroom units and 174 parking spaces. The amendment as well creates a number of site specific changes with respect to required yards and lot coverage as set out in the by-law amendment.

The Board was advised at the commencement of the hearing that a settlement had been reached with Timbercreek Asset Management Inc. and as a result they were withdrawing their appeal as set out in a letter dated October 14, 2011 (Exhibit 2). The Board was also advised in the same letter that Homestead Land Holdings Limited was also withdrawing their appeal.

Ms Reid confirmed on questioning from the Board that both of these appeal withdrawals were unconditional. No settlement was presented to the Board.

This leaves only the appeal of Linda Brand.

Counsel for the parties advised the Board that they were confident that these matters could be heard in five days and requested a hearing date at the end of January 2012.

Counsel was also in agreement that the issues were well known and that they would be able to prepare a Procedural Order within a week.

It was also suggested and agreed to by Counsel present that it would be helpful to have an expert witness meeting to help refine the issues prior to the formal development of witness statements. The Board finds merit in this request.

The Board also advised the parties that the mediation services of the Board would be available at the request of all of the parties.

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Appendix 1

The Board with the consent of Counsel present gave the following directions and Orders:

1. The Board Orders that a five day hearing be set to commence on Monday, January 30, 2012 at 11:00 a.m. at City Hall Hearings Room (Lower Level), 300 Dufferin Avenue, London Ontario.
2. No further notice is required.
3. Counsel for the City of London is directed to confirm the venue with the Board office.
4. The Board further directs Counsel for the parties to, on consent, submit a Procedural Order in the format prescribed by the Board no later than Friday, October 21, 2011.
5. The Board further directs that the expert witnesses that the parties intend to call hold an expert's meeting no latter than Wednesday, November 30, 2011 with the intent to identify any outstanding issues.

The member is not seized for purpose of the hearing but may be spoken to if any problem should arise.

This is the Order of the Board.


"J. P. Atcheson"

J. P. ATCHESON
MEMBER

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Appendix 2

<p>ISSUE DATE: February 7, 2012</p>	 Ontario	<p>RECEIVED FEB 09 2012 PL110495</p>
<p>Ontario Municipal Board City Solicitor's Office Commission des affaires municipales de l'Ontario</p>		
<p>IN THE MATTER OF subsection 34(19) of the <i>Planning Act</i>, R.S.O. 1990, c. P.13, as amended</p>		
<p>Appellant: Appellant: Appellant: Subject: Municipality: OMB Case No.: OMB File No.:</p>	<p>Linda Brand Timbercreek Asset Management Inc. W.H.B. Somerset, London, Inc. By-law No. Z-1-112002 City of London PL110495 PL110495</p>	
<p>IN THE MATTER OF Section 90 of the <i>Ontario Municipal Board Act</i>, R.S.O. 1990, c. O.28</p>		
<p>Motion By: Purpose of Motion: Appellant: Appellant: Appellant: Subject: Municipality: OMB Case No.: OMB File No.:</p>	<p>City of London and 2180040 Ontario Limited Request for an Order Dismissing the Appeal Linda Brand Timbercreek Asset Management Inc. W.H.B. Somerset, London, Inc. Proposed Official Plan Amendment No. Z-1-112002 City of London PL110495 PL110495</p>	
<p>APPEARANCES:</p>		
<p><u>Parties</u></p>	<p><u>Counsel</u></p>	
<p>2180040 Ontario Limited (Abode Varsity Living)</p>	<p>A. R. Patton</p>	
<p>Linda Brand</p>		
<p>The City of London</p>	<p>J. Page</p>	
<p>MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON ON JANUARY 17, 2012 AND ORDER OF THE BOARD</p> <hr style="border: 1px solid black;"/>		

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Appendix 2

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This was a Telephone Conference call (TCC) resulting from an oral decision of the Board issued on October 18, 2001 in which the Board set out the procedural directions for a hearing in the matter of an appeal by Linda Brand from a decision of the Council of the City of London to pass Zoning By-law Amendment Z-1-112002 for properties known municipally as 1235, 1237, 1245 and 1253 Richmond Street. The Board was advised by Counsel present at the pre-hearing on October 14, 2011 that the issues were well understood, and that the parties were prepared to proceed. The Board on this basis, scheduled a five-day hearing to commence on Monday, January 30, 2012 at 11:00 a.m.

The Board further directed that:

1. Counsel for the parties on consent, submit a Procedural Order in the format prescribed by the Board no later than Friday, October 21, 2011;
2. The expert witnesses that the parties intend to call hold an expert's meeting no later than Wednesday, November 30, 2011 with the intent to identify any outstanding issues.

The purpose of the TCC was to determine why the Board's Orders had not been followed and to consider a motion to dismiss brought by Abode Varsity Living.

Abode Varsity Living in its motion seeks an Order of the Board:

1. to dismiss the appeal of the Appellant, Linda Brand;
2. in the alternative, require the Appellant Linda Brand to comply with the Board's Order of October 18, 2011 within six (6) calendar days of the hearing of this motion by:
 - a. identifying in writing the specific land use planning issues the Appellant will advance at the hearing of her appeal;

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- b. identifying in writing the expert witnesses and their areas of expertise retained by the Appellant for the hearing of the appeal;
- c. identifying outstanding land use planning issues, the narrowing of such issues, agreement as to exhibits, and such other matters as the Board may Order; and
- d. advising 2180040 Ontario Limited and the City of London if the Appellant will be represented by legal counsel or an agent at the appeal hearing; and if so, the names and addresses of the legal counsel or agent.

3. Such further and other relief as may be ordered by the Board.

Ms Brand was not represented at this telephone conference. She advised the Board that she had dismissed her previous Counsel (Mr. Bain) shortly after the pre-hearing which is set out in a letter to the Board from Mr. Bain dated October 21, 2011, Exhibit 3, Tab 4. She advised the Board that she has not retained Counsel either for this motion hearing or for the hearing scheduled for January 30, 2012. The Board, in a letter dated December 9, 2011, denied Ms Brand's request for an adjournment of the hearing and directed that if she wished to seek an adjournment, this should be done by written motion. No motion was filed by Ms Brand nor has she replied to the motion to dismiss served on her on January 5, 2012.

The Board recognized that Ms Brand was not represented by legal Counsel and gave her every opportunity to explain her actions and to give the Board some assurance that she would be ready to proceed on January 30, 2012.

Ms Brand, after some consideration of her position, advised the Board that she wished to withdraw her appeal.

Counsel for the parties advised that they would not be seeking costs. The Board concurs that this is not a matter worthy of a consideration of costs.

Based upon Ms Brand's determination to withdraw her appeal:

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The Board Orders that the appeal of Linda Brand against Zoning By-law Amendment Z-1-112002 of the City of London is dismissed.

This is the Order of the Board.

"J. P. Atcheson"

J. P. ATCHESON
MEMBER