Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: September 13, 2022 **CASE NO(S).:** OLT-21-001290

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Delhi Eramosa Neighbourhood Advocates Inc.
Subject:	By-law No. 2021-20617
Municipality:	City of Guelph
Municipal File No.:	OZS21-004
OLT Case No.:	OLT-21-001290
OLT Lead Case No.:	OLT-21-001290
OLT Case Name:	Delhi Eramosa Neighbourhood Advocates Inc. v. Guelph (City)

Heard: August 8-12, 2022 by video hearing

APPEARANCES:

Parties	**Counsel**
Delhi Eramosa Neighbourhood Advocates Inc.	Eric Gillespie
County of Wellington	Peter Pickfield
City of Guelph	Allison Thornton

DECISION DELIVERED BY C. HARDY AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The County of Wellington ("County") submitted a Zoning By-law Amendment ("ZBA") application, which was approved by the City of Guelph ("City"). The amendment to Zoning By-law No. (1995)-14864, as amended ("By-law") relates to the

property municipally known as 65 Delhi Street, in the City (“Subject Property”).

[2] The ZBA was appealed by Delhi Eramosa Neighbourhood Advocates Inc. (“Appellant”) on August 6, 2021.

[3] The Tribunal heard this appeal under section 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (“Act”), which allows a third-party appeal of a ZBA.

SITE CONTEXT

[4] The Subject Property is located at the intersection of Delhi Street and Eramosa Road and is approximately 0.53 hectares (“ha”) in size. The Subject Property has 12.6 metres (“m”) of frontage onto Eramosa Road. Vehicular access to the Subject Property from Delhi Street is via a right-of-way over the main driveway access to Guelph General Hospital. Pedestrian access to the Subject Property from Delhi Street is *via* a walkway along a right-of-way located adjacent to 55 Delhi Street. The Subject Property is currently occupied by two vacant buildings.

[5] Located west and south of the Subject Property are a mix of land uses and built forms. To the west are a mix of medical office buildings from one to four-storeys and further west is Guelph General Hospital. To the south are a mix of medical offices, a funeral home and single detached dwellings.

[6] To the north of the Subject Property is City-owned parkland with single detached dwellings located on the far side of the parkland.

[7] Immediately east of the Subject Property is Eramosa Road and located on the east side of Eramosa Road are single detached dwellings.

[8] Adjacent to the Subject Property is 55 Delhi Street which is a multi-tenanted building containing a variety of businesses, including a daycare.

[9] The Subject Property is located within a Settlement Area under the Provincial Policy Statement 2020 (“PPS”) and the Delineated Built-Up Area under the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”).

[10] The Subject Property is within the Built Boundary and Urban Settlement Area in the Guelph Official Plan (“OP”) and there are two land use designations that apply to the Subject Property. The majority of the Subject Property is designated “Low Density Residential” which permits a density range of 15 to 35 units per ha with a maximum height of three storeys. A small portion of the Subject Property along the western edge is designated “Major Institutional” which allows large-scale institutional uses such as the Guelph General Hospital. Both designations permit the use of special needs housing and consequently an amendment to the OP is not required.

[11] The Subject Property is currently zoned Specialized Community Park “P.3-1” which permits a range of recreational uses.

APPLICATION HISTORY

[12] The existing two-storey building, and accessory building have had a variety of former uses, most recently being the administrative offices for the Guelph-Wellington Paramedic Services. The Subject Property was owned by the City and declared surplus, however, the City noted that 0.38 ha to the northeast of the Subject Property along Eramosa Road containing trees and greenspace has been retained by the City and will remain zoned P.3-1 as passive open space (“Retained Land”).

[13] The County is responsible for managing housing-related services in the County and the City. The County advised the City that they had identified an interest in the Subject Property for reuse as supportive housing which led to the transfer in ownership of the Subject Property to the County and the submission of the ZBA application.

[14] The original application sought amendments to the By-law to rezone the Subject Property from Specialized Community Park (P.3-1) to Specialized Infill Apartment Zone

(R.4D-11(H)) to allow the adaptive reuse of the existing buildings to permit transitional housing use with supports. There are also site-specific regulations to recognize existing conditions associated with the existing buildings. The original proposal was for 36 transitional housing bedrooms designed as separate bedrooms for each occupant with common areas that include kitchen and washroom facilities. The parking area would remain unchanged from the existing 41 parking spaces (“Proposal”).

[15] The Proposal includes minor modifications to the exterior façade of the existing main building to improve accessibility. One modification would add a ramp at the front of the building for improved accessibility and the other modification would add two (2) exterior stairway additions at the rear of the building for fire safety. The County submitted a preliminary site plan with the application for informational purposes to assist with the review of the proposal.

[16] The City held a pre-consultation meeting on March 8, 2021 to determine the application requirements. The ZBA application was filed with the City on April 12, 2021, and was deemed complete on April 19, 2021. A statutory public meeting was held on May 10, 2021, and the County held a virtual information session on June 29, 2021, at which representatives of the Appellant were in attendance.

[17] The County requested a modification to the original application at the City Council meeting on July 12, 2021, to reduce the number of transitional housing bedrooms from 36 to 28. The City approved the ZBA, with the modification to 28 bedrooms and subject to a holding provision contained within the ZBA as recommended by City planning staff. The holding provision provides for a noise study to be completed to the satisfaction of the City prior to any development occurring on the Subject Property.

[18] The Appellant appealed the ZBA approval to this Tribunal on August 6, 2021.

[19] It is noteworthy that the Notice of Approval reflects the revision to a maximum density of 28 bedrooms, however, the text of the ZBA attached to the Notice of Approval

was not amended and stipulates a maximum density of 36 bedrooms. For clarity, the approval by City Council was for a maximum density of 28 bedrooms and that is what the Tribunal is being asked to consider in this appeal.

LEGISLATIVE FRAMEWORK

[20] In deciding the present appeal, the Tribunal must have regard to matters of provincial interest set out in s. 2 of the Act and must be satisfied that the ZBA permitting the Proposal is consistent with the PPS, conforms to the Growth Plan, conforms to the OP and overall, represents good planning in the public interest. In addition, the Tribunal must have regard to the decision of the Municipality and the information it considered in the course of making its decision.

THE HEARING

[21] The appeal was previously the subject of case management and has been governed by a Procedural Order and Issues List. Robert Eilers was granted Participant status, however, a Participant Statement was not filed with the Tribunal in accordance with the Procedural Order. The Tribunal notes that Mr. Eilers main concerns centred around compatibility and access to the Subject Property, both of which were issues addressed by the experts during the course of the hearing.

[22] The Tribunal heard from four witnesses. The County called David Aston as its planning witness, the City called Katie Nasswetter, a Planner with the City, as its planning witness and the Appellant called Michael Manett as its planning witness. All three were qualified by the Tribunal without objection to provide expert evidence in the area of Land Use Planning and their respective Acknowledgements of Expert's Duty were filed in the Exhibits.

[23] The County also called Mark Poste who was qualified by the Tribunal, without objection, to provide evidence in the field of public housing and homelessness services. Mr. Poste's Acknowledgement of Expert's Duty is filed in the Exhibits.

[24] In advance of the hearing, the expert witnesses for all Parties came to an Agreed Statement of Facts (“ASF”). The Parties agreed that the ZBA has regard to matters of Provincial interest under s. 2 of the Act, is consistent with the PPS and conforms to the Growth Plan. There was consensus that the ZBA advances Provincial policy regarding affordable housing. Based on the evidence presented, the Tribunal accepts these positions and finds the same.

[25] The ASF stated that the expert witnesses agreed that Issues 1, 2 and 3 in the Issues List were resolved.

[26] During the hearing it became apparent that the majority of the remaining issues had been resolved and arguments at the hearing focused primarily on the OP, and in particular Policy 9.2.2.5. For ease of reference, Policy 9.2.2 reads as follows:

> **9.2.2 Special Needs Housing**
>
> 1. *Special needs housing* shall be permitted within land use designations where residential uses are permitted
>
> 2. The City in conjunction with the County, Provincial and Federal governments will support the development and retention of *special needs housing* throughout the city.
>
> 3. Group homes shall be permitted in all areas of the city where residential uses are allowed in accordance with the policies of this Plan, and provided that:
>
> > i) Adequate residential amenities and services are available nearby; and
> >
> > ii) In instances where a *group home* is located within a residential designation, it is of a size and land use character, which is similar to, or *compatible* with the existing area.

4. The *Zoning By-law* will specifically define the various types of special needs housing and will establish regulations regarding such matters as minimum distance separation between facilities, minimum standards for occupancy and site development.

5. Where an amendment to the *Zoning By-law* is required to permit *special needs housing*, such amendments will consider:

i) The nature of the proposed use and its compatibility with the immediate neighbourhood;

ii) The objective of community integration;

iii) The Existing *Zoning By-law* regulations;

iv) Specific performance standards such as dwelling type, buffering, minimum amenity area and minimum floor space; and

v) Access to community facilities such as education, public transit and recreation.

[27] At the commencement of the hearing, the Parties outlined three areas of concern that would be the focus of the evidence:

1. Change in use would create conflict / incompatibility with the existing community;
2. Accessibility to open space; and
3. Suitability of the existing building with the intended use.

[28] Attached as Attachment 1 to this decision is an amended ZBA to reflect statements made by Mr. Manett in his witness statement and to include reference to the proposed maximum density of 28 bedrooms.

[29] On day 3 of the hearing, the Appellant presented a nine (9)-item proposal ("DENA Proposal") to the Tribunal and the Parties. The Appellant emphasized that it was not a settlement proposal, but would be the focus of the Appellant's position, which had been refined since the commencement of the hearing. The Appellant suggested that the items could be the basis for a discussion amongst the Parties. The Tribunal notes that the DENA Proposal was presented subsequent to the County and City calling their respective cases and as such, their experts did not speak to the items in the DENA Proposal.

Housing Services and Homelessness

[30] The area of public housing and homelessness in the City was central to the appeal. Mr. Poste is employed as the Director of Housing for the County and provided a detailed and helpful overview to the Tribunal at the outset of the hearing.

[31] The County is designated under Ontario Regulation 367/11 pursuant to the *Housing Services Act*, 2011 S.O. 2011, c.6, Sched. 1, as amended ("Housing Services Act") as a Service Manager responsible for delivery of housing and homelessness programming. The County is the designated Service Manager for the City and the County and is responsible for planning and managing housing services including delivery and administration of provincially mandated social and affordable housing programs and initiatives to prevent and address homelessness. Mr. Poste explained that the majority of services that are provided range from emergency shelter housing to affordable rental housing.

[32] The County works with stakeholders and government agencies to ensure high quality services and supports are available to meet existing and emerging needs in the community. A key component of the Service Manager role is housing provision.

[33] Section 6 of the *Housing Services Act* states that as Service Manager, the County is responsible for developing, implementing, and reporting on a ten (10)-Year Housing and Homelessness Plan ("Plan"). The current Plan for Guelph-Wellington is

referred to as “A Place to Call Home” and was completed in 2018 (“2018 Plan”).

[34] One key community objective in the Plan is to end chronic homelessness within the Guelph-Wellington community. Mr. Poste stated that the objective is to shift away from crisis emergency responses towards permanent housing solutions and homelessness prevention and create a system that is housing focused.

[35] Mr. Poste testified that the County has taken steps to develop a Coordinated Entry System that standardizes a pathway to make evidence-based decisions which connect agencies to the central database where they can track interactions with programs and services. Once assessed, families are added to a “By-Name List” which Mr. Poste likened to a waiting list or a prioritization tool. Mr. Poste testified that these two (2) tools have assisted the County in achieving a reduction in homelessness.

[36] It is Mr. Poste’s opinion that transitional housing with supports is urgently needed to address homelessness. The County identified the Subject Property as ideal to fit into their existing programs and assist in bridging the gap between homelessness and permanent housing. Mr. Poste noted that 28 individuals on the By-Name List would become residents at the Subject Property if the Proposal were approved.

Planning Evidence

[37] The experts agreed that the Proposal would assist in dealing with an urgent need and that there is direction in the OP to support the County in homeless housing. The experts further agreed that the Provincial direction in the PPS and Growth Plan are to align land use planning decisions with housing and homeless plans which lead to healthy communities.

[38] Mr. Manett emphasized that the Appellant is not opposed to supportive housing developments, however, feels that the City and County should approach these developments in a way that is structured for success. This would include provision of sufficient space for transitional housing units together with supports needed to progress

residents towards permanent housing.

[39] Mr. Aston noted that the OP defines both special needs housing and dwelling unit. Special needs housing is defined as “any housing, including dedicated facilities, in whole or in part, that is used by people who have specific needs beyond economic needs, including but not limited to, needs such as mobility requirements or support functions required for daily living, and includes transitional housing”. Dwelling unit is defined as “a room or group of rooms occupied or designed to be occupied as an independent and separate self-contained housekeeping unit”. He testified that transitional housing is a form of special needs housing and the intent of the Proposal is not that each bedroom is self-contained. The Proposal has a bedroom for each occupant with shared common areas and as such, does not meet the definition of dwelling unit. He opined that this is an important point with respect to the policy framework and the criteria that is applied when considering the ZBA for this type of use.

[40] Ms. Nasswetter testified that Attachment 2 to the Staff Report (Exhibit 2A, Tab 40) distinguishes between 2A Zoning Regulations and 2B Proposed Conditions of Site Plan Approval. The Zoning Regulations are the new specialized regulations relating to the ZBA while the Proposed Conditions of Site Plan Approval are conditions anticipated to be reviewed through the site plan approval process. Ms. Nasswetter explained that 2A and 2B are two distinct processes and should be distinguished from one another. The Zoning Regulations regulate the site in terms of how the building is located on the site, uses that are permitted on the site etc. The Proposed Conditions of Site Plan Approval relate to the detailed design of the site, the materials used, access, grading and drainage. She noted that while these site plan conditions are not addressed within the ZBA, they are important considerations for how the site is developed. One of the proposed conditions set out in 2B was a Crime Prevention Through Environmental Design Assessment (“CPTED”) which assists in identifying situations on-site that could be improved through better design, for example, better lighting in a dark area of the site.

Policy 9.2.2.5 OP

[41] The experts agreed that Policy 9.2.2 in the OP relating to special needs housing identifies that this form of housing is permitted and as such, no amendment to the OP is required. Mr. Aston opined that the Proposal is a more specific type of supportive housing and as such requires a specific definition for use to be set out in the ZBA.

[42] The most specific policy of the OP relating to the proposed development is policy 9.2.2.5 and was the focus of the expert evidence during the hearing. This policy sets out the criteria to be considered when an amendment to the zoning by-law is required to permit special needs housing. The three areas of concern noted in paragraph 27 above were addressed by the expert testimony in relation to the criteria in policy 9.2.2.5.

[43] Mr. Manett opined that this was the most important policy for consideration in this ZBA application and that all five (5) criteria can be addressed with the provision of better floorplans by the County. He further testified that the developer in this case is the County, a government agency, and consequently should be put to a higher standard in addressing these criteria and how the proposed use fits with the community. In cross examination, Mr. Manett agreed that the Act does not prescribe a different process, nor a more onerous process, for a public entity as opposed to a private developer.

[44] During the course of the hearing, the concerns of the Appellant were narrowed to conformity with Policies 9.2.2.5(i), 9.2.2.5(ii) and 9.2.2.5(iv), which became the focus of the oral evidence and testimony.

i) The nature of the proposed use and its compatibility with the immediate neighbourhood

[45] The Planners agreed that there were no land use compatibility issues with respect to physical impacts on neighbouring properties since there were no physical changes proposed to the existing buildings, save and except the two (2) additions referred to in paragraph 15 above.

[46] Ms. Nasswetter opined that there were no compatibility issues relating to the surrounding residential uses nor with the institutional use of the hospital. She took the Tribunal to Attachment 8 of the Staff Report (Exhibit 2A, Tab 40) to emphasize that the ZBA regulates how land is used, not who uses the land. Ms. Nasswetter explained that the analysis is not to look at compatibility of residents, but rather, compatibility of the residential uses.

[47] Ms. Nasswetter also took the Tribunal to Policy 9.3.1.1 in the OP which are general criteria to be used to assess intensification proposals for multi-unit residential buildings and intensification within existing residential neighbourhoods. Ms. Nasswetter explained that the Proposal does not meet the definition of multi-unit but can be considered intensification as the Subject Property has not been used for residential purposes in the past and the Proposal would add new residents to the neighbourhood. She noted that the criteria listed in Policy 9.3.1.1 measure compatibility and how the proposed use would fit within an existing neighbourhood. Ms. Nasswetter explained that she had regard for the 11 criteria set out in Policy 9.3.1.1 and concluded that the proposed adaptive re-use of the Subject Property meets the criteria as a form of intensification and is consistent with this policy directive of the OP.

[48] Of note was Ms. Nasswetter's opinion in her written Affidavit (Exhibit 2A, tab 61) regarding criteria 9.3.1.1.4 and 9.3.1.1.5 relating to traffic and vehicular access. She concluded that there would be limited traffic generated from the Proposal with no impact on the surrounding street network. She noted further that the on-site parking of 41 spaces would be sufficient to accommodate employees, support staff, visitors and the 20 spaces made available for hospital employee parking pursuant to an existing agreement with the hospital.

[49] In cross examination, Ms. Nasswetter was asked whether future residents living at the Subject Property would have vehicles to park in the parking lot. The County had advised the City that experience to date was that residents in emergency shelters do not have vehicles. Ms. Nasswetter agreed that if each of the 28 future residents owned

a vehicle there would not be sufficient parking on site but maintained that this is very unlikely.

[50] Mr. Manett testified that there has not been any analysis conducted to determine whether the existing parking is sufficient and further that it is appropriate to have a parking standard in the ZBA. He did recognize that not all of the future residents would have vehicles and as such, a reduced parking rate would be appropriate in this case. Mr. Manett did note that the fact that residents would not have vehicles would mean that access to the site would be on foot and as such, the laneway adjacent to 55 Delhi Street would have increased pedestrian traffic.

[51] In cross examination, Mr. Manett agreed that there was enough parking in the existing lot. Mr. Manett noted that having a parking regulation in the ZBA may establish that there is excess parking which would enable some of the existing lot to be used for other purposes. The City brought the Tribunal's attention to the disparity in the Appellant's arguments relating to parking - the cross examination of Ms. Nasswetter focussed on the lack of parking while Mr. Manett's evidence was that there may be too much parking. The City submitted that its engineering department had analyzed the parking and concluded that the existing lot was sufficient for the proposed use.

[52] The Appellant argued that the rationale provided by the County and City for reduced parking was based on characteristics of the proposed future residents, and this represented people zoning which is not a permitted approach. The Appellant relied on *R. v. Bell*, [1979] 2 S.C.R. 212 142 and *Rosen v. Blue Mountains (Town)*, [2012] OJ No. 3366 for the principle that "…zoning based on personal characteristics or qualities, was not within the scope of *The Planning Act*". The Appellant submitted that the County and City analysis of parking requirements was flawed and as such Mr. Manett suggested a traffic study be required by the City as there is not currently sufficient evidence to support a decision on parking.

[53] The County submitted that the City traffic department had reviewed the ZBA application and did not require a traffic study. Further, the County submitted that the

Appellant did not call any expert evidence from a qualified transportation planner to support any of the concerns raised regarding traffic impacts.

[54] The County argued that there is no substantial parking issue and that this type of facility, not the future residents, does not generate the same kind of parking as is generated in other residential uses. The analysis looked at how much traffic the Proposal is likely to generate and through this analysis it was determined that the policy requirement was met.

[55] The Tribunal is generally satisfied that the Proposal considered both traffic and parking requirements for the type of facility proposed and not from the perspective of the residents who will be living at the Subject Property. The evidence does not support the allegation that the approach taken by the County and the City was flawed thereby requiring further analysis.

[56] The Tribunal finds that there is no basis in the evidence to require further scrutiny and the Appellant's evidence did not stand up under cross examination. The Appellant argued that there may not be enough parking if the residents all had vehicles, however under cross examination, Mr. Manett noted that there may be an excess of parking and part of the lot could be converted to other uses. The Tribunal prefers the evidence of the County and the City regarding the existing parking lot and availability of parking.

[57] The Appellant submitted that OP policies give direction regarding the need for park areas and open space. The public, including the daycare at 55 Delhi Street, make use of the open space adjacent to the building on the Subject Property and the Retained Land. The Appellant agrees that it is important for the residents in the proposed development to have access to private open space but argues that not all of the open space should be reserved for the private use of the residents. The neighbourhood and the daycare are impacted by the loss of open space. They are further impacted by the distance that they now must walk in order to access the open space on the Retained Land due to the loss of the connection across the Subject Property. The Appellant argues that options to maintain convenient access to open

space have not been fully explored by the County.

[58] Mr. Manett testified that City staff did not address compatibility in analyzing the ZBA application. City staff made no mention of the daycare located at 55 Delhi Street, nor the integration of the proposed use into the existing community. He opined that the impact on the daycare is significant, and this impact has not been addressed.

[59] Mr. Manett testified that the analysis by the City should have included the loss of parkland currently accessible to the neighbourhood. He noted that he had discussions with the daycare, who are a member of the Appellant group, and confirmed that the daycare uses the greenspace on the Subject Property for activities. They also use the Retained Land adjacent to the parking lot but have lost the connection across the parking lot due to the change in ownership. He testified that a key issue for the neighbourhood is how to maintain access to the Retained Land which continues to be used as open space by the community.

[60] In cross examination, Mr. Manett noted that the daycare would prefer to use the greenspace adjacent to their building but understood that this is no longer possible with the change in ownership. He also agreed that there was greenspace located on the daycare's property but noted that it was not appropriate for the daycare's use and did not know whether the daycare's greenspace could be adapted for the daycare's use. Mr. Manett acknowledged that there was no agreement between the daycare and the County or the City for the use of the greenspace, but that the daycare used it as public open space. However, Mr. Manett maintained that the change of use impacted the public's access to the Retained Land and opined that the County and City did not address alternatives to allow the public to continue to have convenient access to the Retained Land, such as an access point through the Subject Property.

[61] The City submitted that as owner of the Subject Property, the County can determine whether or not to permit public access and this does not arise from the ZBA. The City relied on *Fawcett v. Fort Frances (Town)*, 2022 CanLII 5473 (ON LT) which had similarities relating to a property owned by a public entity. The public had

previously enjoyed parklike uses which the Appellant argued would be lost and the Tribunal did not give effect to this argument. The City further argued that the Appellant cannot elevate to parkland a space that the public has simply been utilizing as open space.

[62] Ms. Nasswetter testified that the Subject Property is not part of the park inventory for the City and that park staff reviewed the ZBA application and did not have any concerns regarding the Proposal. Despite part of the Subject Property being zoned P.3-1, Ms. Nasswetter advised the Tribunal that it was not used for programmed park space but rather was passive open space. Ms. Nasswetter reiterated that the Retained Land will remain in City ownership as passive open space.

[63] In cross examination, Ms. Nasswetter agreed that public access to the Retained Land may not be as convenient as it had been but maintained that this is not a planning impact of the Proposal. The daycare adjacent to the Subject Property uses the greenspace on the Subject Property and the Retained Land for outdoor activities. Ms. Nasswetter also agreed that the daycare would no longer have access to the greenspace on the Subject Property as it was no longer in City ownership. However, she noted that the Retained Land is still accessible to the daycare and the public and a further walk to access the open space is a manageable change in her opinion.

[64] The County argued that the daycare did not provide any materials for consideration and Mr. Manett raised the daycare's concerns during his oral testimony. Once raised by Mr. Manett, the daycare's concerns were addressed by the County and City. The County argued that the evidence shows that the daycare is relying on access to space that they do not own, nor do they have an agreement in place for the use of. Consequently, the change of use does not result in a substantive impact to the daycare. The County and the City submit that the Subject Property is not part of the City's park inventory and has never been used as a public park. The City testified that it has a robust existing park system and emphasized that the Retained Lands will remain in City ownership as open space accessible by the community, including the daycare.

[65] The County submitted that consideration was given to the proposed development and its compatibility with the neighbourhood and that no substantive land use compatibility issues have been identified by the Appellant.

[66] The Appellant agreed with the County and City that it is important for future residents at the Subject Property to have access to private open space. However, the Appellant argued that not all of the open space should be reserved for the private use of the residents and the convenient access to open space by the neighbourhood and the daycare is directly impacted by the Proposal. The Tribunal agrees with the Parties that access to open space, both private and public, are important and finds that this has been considered. The Tribunal is persuaded by the fact that the Retained Land will remain in City ownership and be fully accessible to the public and to the daycare.

[67] The Tribunal accepts the position of the County and the City and finds that the public and the daycare will continue to have access to the open space on the Retained Land. While access to the Retained Land may not be as convenient as it has been in the past, the access remains available, and the Tribunal agrees with Ms. Nasswetter that this is a manageable change. The Tribunal finds that no substantial land use compatibility issues have been identified by the evidence.

ii) The objective of community integration

[68] The Planners agreed that the Subject Property is well located for the Proposal. It is in close proximity to trails and open space, the City's downtown, health and social support services and commercial services and amenities.

[69] Under cross-examination, Mr. Poste agreed that community support and community involvement in a project like the Proposal is very important. He further noted that the County is supportive of working with neighbours and community partners to achieve the goal of successfully housing residents on the Subject Property.

[70] Ms. Nasswetter opined that the analysis of community integration requires one to

look at the site location and its ability to provide opportunities for residents to participate in the community. The Subject Property lends itself to opportunities for community integration due to its close proximity to commercial and social services, access to public transit and the provision of support staff on-site to connect residents to community facilities.

[71] Mr. Manett testified that a master plan for the Subject Property could address how community integration would occur, including connections to the Retained Land and to Eramosa Road. He opined that it would be appropriate to address compatibility through an overall master plan for the full site and the adjacent Retained Land to properly plan the site for the benefit of the community, while supporting the needs of the County and City.

[72] Mr. Manett was questioned in cross examination on whether the OP policies contemplated a master plan and he agreed that they do not, but it was his recommendation. He suggested a master plan that went beyond the boundaries of the site to demonstrate how integration with the community can occur.

[73] The County submitted that Mr. Manett's testimony regarding Policy 9.2.2.5(ii) is too narrow and that a master planning process is not supported by the policies of the OP or the evidence presented to this Tribunal. Mr. Manett agreed that the polices do not require a master planning process for special needs housing developments. The County noted that Mr. Manett's only justification for a master planning process was to secure pedestrian connections across the Subject Property and establish park use. The County submitted that connections and access are not zoning matters and are more appropriately considered in the context of a site plan approval process.

[74] The Tribunal accepts the position of the County and agrees that the OP policies do not require a master planning process in this case. The reasons put forward by Mr. Mannett to justify his recommendation for a master plan are not appropriate at this stage, especially given that the Proposal is subject to site plan control which will deal with such details.

> *iv) Specific performance standards such as dwelling type, buffering, minimum amenity area and minimum floor space*

[75] The Appellant takes the position that the use of the words “will consider” in Policy 9.2.2.5 should be interpreted in subsection (iv) to mean that a decision maker is mandated to consider specific performance standards. The Proposal is a change in use as the Subject Property has not been used for special needs housing in the past and as such, the Appellant argued that it is reasonable and necessary to consider minimum amenity area and floor space since they have not been considered before in relation to this site. The Appellant submitted that it has proposed the only reasonable option, being the provision of detailed floor plans as discussed further below. The Appellant contends that the City and the County have not proposed any standard or reasonable alternative, but merely argued that performance standards are not a relevant consideration. The Appellant argues that this is an incorrect interpretation of the wording in the OP which mandates consideration by use of the word “will”.

[76] The County disagreed and submitted that the use of “such as” in this policy criteria makes it clear that the policy is not prescriptive. The County submitted that the appropriate planning test is whether the information provided is sufficient to confirm the appropriateness and feasibility of the existing building for the Proposal. The County further submitted that the evidence demonstrates that this test has been met. The County noted that Mr. Poste, who has the expertise and experience to address this issue, confirmed that the building space and configuration will work well to deliver the proposed supportive housing program for 28 residents.

[77] The Appellant argued that without appropriate measurements and descriptions, it is impossible to define specific performance standards. The draft plans provided by the County do not indicate uses so one cannot determine what is an amenity area. The Appellant argued that details such as provision of food and program delivery need to be understood before the Tribunal can make a determination. The Appellant further argued that the County has an obligation to specify what amenity means in the context

of interpreting the ZBA and they have failed to proffer any evidence in this regard. This leaves the Tribunal with the task of interpreting the OP policies without any expert evidence.

[78] Mr. Manett testified at length about the importance of having layouts and floorplans available to review to determine whether the details in the ZBA are appropriate. Mr. Manett opined that when designing a site specific ZBA, information pertaining to gross floor area, dimensions and the determination of primary and accessory uses are required. The Appellant argued that the Tribunal cannot consider minimum standards, such as minimum amenity area and minimum floor space, without this evidence.

[79] In cross examination, Mr. Manett maintained that floorplans were needed to determine if the ZBA can be supported. He clarified that specific detailed layouts of each room are not required, but room sizes need to be detailed so that the ZBA can establish the gross floor area assigned to the 28 bedrooms. The City brought Mr. Manett to s. 41 of the Act which sets out specific requirements which can be imposed as a matter of site plan regulation. Mr. Manett agreed that s. 41(4.1) of the Act excludes from site plan control interior design and layout of interior areas thereby prohibiting Council, and by extension this Tribunal, from requiring layouts of interior areas of a building. While agreeing to this, Mr. Manett did note that this section of the Act did not prohibit Council from requesting that they be shown what the development will look like, however, he agreed that the ZBA is not deficient due to the failure to prescribe floor layouts or minimum floor areas. Mr. Manett did not indicate any overall concerns with the floorplans that had been provided by the County, but maintained that more detail was required. The Appellant agreed that pursuant to s. 41(4.1) interior design is not the subject of site plan control, however, interior information is of assistance and may be required to meet the requirements of Policy 9.2.2.5(iv).

[80] In cross examination, Mr. Manett agreed that it is acceptable for Council to approve a ZBA and defer fully detailed site plans, but he noted that it is not appropriate

in all cases. He further noted that Municipalities can require additional submissions, such as floorplans, based on the nature of the ZBA application. When questioned further, Mr. Manett agreed that there are no requirements mandating that a supportive housing application must have a complete site plan prior to a ZBA approval.

[81] Mr. Aston opined that the concerns raised by the Appellant relating to internal design and layout are not proper zoning matters and not required to be considered to address performance standards. Details associated with internal design are not relevant to establish whether the Proposal is an appropriate use for the Subject Property. Mr. Aston noted that Mr. Poste and the County have the knowledge and expertise as the Service Manager to design the internal space as part of their operational planning.

[82] In cross examination, Mr. Aston agreed that minimum floor space and minimum amenity space must be considered but maintained that the requirement does not mandate a breakdown of the use of the space inside the building. Overall, he testified that there is no need for internal floorplans to determine if the Proposal is appropriate within the existing building, this is not required when considering a zoning by-law. When asked in cross examination if the draft floorplans provided were subject to change, Mr. Aston agreed that they could change as the County worked through their internal design process to allocate space. However, he testified that the draft information that has been provided was satisfactory for him to form the opinion that the proposed design is appropriate for consideration of the zoning.

[83] Ms. Nasswetter testified that internal floorplans are not part of a zoning by-law amendment application as the zoning by-law analysis is more concerned with the layout of the entire site.

[84] The County argued that the level of detail requested by the Appellant regarding minimum amenity space and minimum floor space is beyond the jurisdiction of the Tribunal. Mr. Poste testified that the final design of interior areas would be carried out by the County and agency partners during the development process. The County is the

experienced housing provider and will work with partners to design the specifics of the proposed development. The County reiterated that the request for additional detailed design is beyond the scope of zoning matters and expressly excluded as a site plan matter pursuant to s. 41(4.1) of the Act.

[85] The Appellant submitted that the Tribunal has the task of interpreting the OP policies without any expert evidence with respect to specific performance standards under Policy 9.2.2.5(iv). The Tribunal disagrees. The Tribunal heard evidence from Mr. Poste, who was the only expert proffered by the Parties in Public Housing and Homelessness Services and accepts his testimony. Mr. Poste was satisfied based upon the information provided in the plans that the space was appropriate for the proposed use and development. The County and Mr. Poste are experienced housing providers and have testified that they will work with partners to design the specifics of the proposed development and the Tribunal is satisfied that this policy consideration has been met.

[86] The Tribunal considered the Appellant's position but cannot accept Mr. Mannett's assertion that detailed floorplans and measurements are required before the Tribunal can make a determination in this matter. Mr. Manett agreed that the ZBA before the Tribunal is not deficient due to the lack of prescribed floor layouts or specificity in minimum floor area. The Tribunal agrees and finds that the evidence demonstrates that the Subject Property has ample space in the totality of the building. Exact space is not dealt with at the zoning stage, but rather more appropriately dealt with during the site plan stage.

DENA Proposal

[87] The requested items contained within the DENA Proposal were largely addressed through testimony and evidence discussed above.

[88] The County did note a willingness to work positively with the Appellant on the items relating to a CPTED review and public participation in the site plan process. The

County also noted their support of the establishment of a Public Liaison Committee with the participation of the Appellant and the public. The City is not opposed to the suggestion by the County to work with the Appellant and the neighbours. The County and the City did emphasize that involvement of the Appellant and the public must not in any way delay the process due to the urgent need for the Proposal. To that end, the County did propose a timeline to ensure an efficient process

[89] The Tribunal commends the Appellant's efforts, however, will not make a finding on the DENA Proposal. It is not the Tribunal's role to compare applications that come before the Tribunal with proposals put forward by a Party. These are better discussed amongst the Parties as a means of possible resolution or points where the Parties may be able to work positively together in the future.

ANALYSIS AND FINDINGS

[90] Ms. Nasswetter and Mr. Aston concluded that the ZBA conforms with the OP, provides reasonable and appropriate zoning regulations for the proposed use and represents good planning in the public interest and the Tribunal agrees.

[91] In its closing submissions, the City submitted that matters of County administration and implementation of its homelessness plan are not before the Tribunal, nor is the decision of the City to transfer the Subject Property to the County. The Tribunal is being asked to consider the ZBA which is on appeal. The Tribunal agrees with the City in this regard.

[92] The County submitted that the policy requirement in 9.2.2.5 of the OP is that the criteria are to be *considered* (emphasis added) when an amendment to a City Zoning By-law is required for special needs housing. The County submits that the criteria were fully considered and assessed by the County and the City in determining the appropriateness of the ZBA. The Appellant submitted that the City had not fully considered Policies 9.2.2.5(i), 9.2.2.5(ii) and 9.2.2.5(iv). After considering the evidence presented, the Tribunal has fully assessed the ZBA in terms of the criteria set out in

Policy 9.2.2.5 and finds the ZBA is appropriate. The Tribunal agrees with the County that the Policy requirement is that the criteria are to be considered and this has been done through the Municipal process and by the Tribunal in this hearing.

[93] Through the course of the hearing, it became evident that the main contested issues related to compatibility and community integration relating to the greenspace on the Retained Land and the lack of detailed floor layouts as they relate to minimum floor space standards. For the reasons provided above, the Tribunal prefers the expert opinions and evidence of the County and City and finds that the Appellant's evidence did not provide a planning basis to refuse the ZBA.

[94] The Parties agreed that the ZBA is consistent with and advances the Provincial direction regarding affordable housing as set out in the PPS and conforms to the Growth Plan. In addition, the Parties agreed that there is an urgent need to address homelessness in the City and County and that the Subject Property is a good location for the Proposal. The Tribunal agrees and finds that the ZBA has regard to Provincial interests as set out in s. 2 of the Act, conforms with the OP and represents good planning in the public interest.

CONCLUSION

[95] The Tribunal finds that the ZBA and the Proposal have regard to matters of Provincial interest in s. 2 of the Act, are consistent with the PPS and conform to the Growth Plan and OP. They represent an efficient use of land in an appropriate location, which contributes to the County's objective of providing transitional housing to bridge the gap between homelessness and permanent housing in the City. Overall, the proposed ZBA and the development that it permits represent good planning in the public interest and address the urgent need to support the County in homeless housing.

ORDER

[96] **THE TRIBUNAL ORDERS** that the appeal against By-law No. (1995) – 14864,

as amended of the City of Guelph is allowed in part and By-law No. (2021)-20617 is amended as set out in Attachment 1 to this order. In all other respects, the Tribunal orders that the appeal is dismissed.

"*C. Hardy*"

C. HARDY
MEMBER

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.

ATTACHMENT 1

The Corporation of the City of Guelph

BY-LAW NUMBER (2021) – 20617

A by-law to amend By-law Number (1995)-14864, as amended, known as the Zoning By-law for the City of Guelph as it affects the properties municipally known as 65 Delhi Street and legally described as Part 1 and Part 3 of Lot 40, Registered Plan 133, City of Guelph (File# OSZ21-004).

Whereas Section 34(1) of The Planning Act, R.S.O. 1990, c.P.13 authorizes the Council of a Municipality to enact Zoning By-laws;

The Council of the Corporation of the City of Guelph enacts as follows:

1. By-law Number (1995)-14864, as amended, is hereby further amended by transferring lands legally described as Part 1 and Part 3 of Lot 40, Registered Plan 133, City of Guelph, from the existing “Specialized Community Park” Zone known as the P.3-1 Zone to a new “Specialized Infill Apartment” Zone, to be known as the R.4D-11 Zone.

2. Section 5.4.3.1, of By-law Number (1995)-14864, as amended, is hereby further amended by adding a new subsection 5.4.3.4.11:

5.4.3.4.11 R.4D-11

65 Delhi Street

As shown on Defined Area Map Number 34 of Schedule “A” of this **By-law**.

5.4.3.4.11.1 Permitted **Uses**

- **Supportive Housing**
- **Accessory Uses** in accordance with Section 4.23

The following definition shall apply in the R.4D-11 Zone:

Supportive Housing shall be defined as the **Use** of a **Building** with suites or bedrooms in a shared setting, to provide transitional housing, including on-site support services that are designed to assist residents who need specific supports while allowing them to maintain a level of independence. Support services may include, but are not limited to, collective dining facilities, laundry facilities, counseling, educational services and life skills training. Supportive Housing does not include the following uses: **Lodging House Type 1** or **Lodging House Type 2 or Group Homes.**

5.4.3.4.11.2 Regulations

In accordance with Section 4 (General Provisions) and Section 5.4 and Table 5.4.2 (Regulations Governing R.4 Zones) of Zoning **By-law** (1995)-14864, as amended, with the following exceptions and additions:

5.4.3.4.11.2.1 Minimum **Lot Frontage**

Despite Table 5.4.2, Row 4, the minimum **Lot Frontage** shall be 12 metres.

5.4.3.4.11.2.2 Maximum Density

Despite Table 5.4.2, Row 5, a maximum of 28 bedrooms shall be permitted.

5.4.3.4.11.2.3 Maximum **Front Yard Setback**
Despite Table 5.4.2, Row 7, the maximum **Front Yard Setback** shall be 42 metres.

5.4.3.4.11.2.4 Minimum **Rear Yard**
Despite Table 5.4.2, Row 9, the minimum **Rear Yard** shall be 2.0 metres.

5.4.3.4.11.2.5 **Landscaped Open Space**
Despite Table 5.4.2, Row 13, a maximum of 23 parking spaces are permitted in the **Front Yard**.

5.4.3.4.11.2.6 **Off-Street Parking**
Despite Table 5.4.2, Row 14, and Section 4.13, a minimum of 15 **Parking Spaces** shall be provided.

5.4.3.4.11.2.7 Holding Provision
Purpose:

To ensure that development of the subject lands does not proceed until the following condition has been met to the satisfaction of the **City** related to the subject development.

Condition:

1. That a noise study be completed in keeping with the City of Guelph Noise Control Guidelines and approved by the General Manager/City Engineer.

4. Schedule “A” of By-law Number (1995)-14864, as amended, is hereby further amended by deleting Defined Area Map 34 and substituting a new Defined Area Map 34 attached hereto as Schedule “A”.
5. Where notice of this By-law is given in accordance with the Planning Act, and where no notice of objection has been filed within the time prescribed by the regulations, this By-law shall come into effect. Notwithstanding the above, where notice of objection has been filed within the time prescribed by the regulations, no part of this By-law shall come into effect until all of such appeals have been finally disposed of by the Local Planning Appeal Tribunal.

Approved by the Ontario Land Tribunal this ___ day of _____.

SCHEDULES:

Schedule A: Defined Area Map 34

Schedule A