

To: City Council

From: Anthony Ambra, P.Eng., Commissioner,  
Economic and Development Services Department

Item Number: INFO-24-146

Date: June 12, 2024

Subject: Appeal to the Ontario Land Tribunal of a Zoning By-law  
Amendment for 1081 and 1093 Harmony Road North and  
836 Pinecrest Road

File: Z-2022-11

---

## **1.0 Purpose**

The purpose of this Report is to advise Council on the status of an appeal submitted to the Ontario Land Tribunal (the “O.L.T.”) by WeirFoulds LLP on behalf of the Maxwell Village Neighbourhood Association (the “M.V.N.A.”) regarding the City’s decision to approve the revised application to amend Zoning By-law 60-94 (File: Z-2022-11) submitted by Icon Harmony Limited (the “Applicant”) for 1081 and 1093 Harmony Road North and 836 Pinecrest Road (the “Subject Site”).

It is a policy of Council that the Economic and Development Services Department prepare a report to the Economic and Development Services Committee when an appeal has been lodged with respect to planning applications. This Report is an Information Report rather than a report to the Economic and Development Services Committee as a result of recent changes made to the Planning Act, R.S.O. 1990, c. P.13 (the “Planning Act”) that have the effect of automatically dismissing the appeal.

Attachment 1 is a map showing the location of the Subject Site and the existing zoning in the area.

Attachment 2 is a copy of the appeal letter dated May 21, 2024 submitted by Weirfoulds LLP on behalf of the M.V.N.A.

## **2.0 Input From Other Sources**

The City Solicitor was consulted during the preparation of this Report.

## **3.0 Analysis**

The Subject Site is located at 1081 and 1093 Harmony Road North and 836 Pinecrest Road with frontage on both Harmony Road North and Pinecrest Road. The Subject Site is occupied by three single detached dwellings.

On November 18, 2022, the Applicant submitted Zoning By-law Amendment, Draft Plan of Subdivision and Draft Plan of Condominium applications related to the Subject Site. The original development proposal featured a total of 73 units consisting of 36 single detached dwellings, 22 semi-detached dwellings and 15 block townhouse dwellings as part of a common elements draft plan of condominium.

A public meeting was held on January 9, 2023 concerning the subject development applications. At the conclusion of the public meeting, the Economic and Development Services Committee adopted a recommendation to direct staff to further review the subject applications and prepare a subsequent report and recommendation back to the Economic and Development Services Committee.

In response to the neighbourhood's concerns about the potential impact of traffic generated by the proposed development on local roads, the Applicant redesigned the northwest corner of the Subject Site in an attempt to provide an open full movement driveway access on Harmony Road North. The revised site plan included 33 single detached dwellings, 24 semi-detached dwellings, and 21 block townhouse dwellings, for a total of 78 units. The Applicant submitted the revised applications on June 28, 2023.

Between June 2023 and March 2024, the City, the Region of Durham and the Applicant worked collaboratively to assess the feasibility of the proposed open full movement driveway access on Harmony Road North. However, a full movement driveway on Harmony Road North was ultimately deemed not possible from a life safety perspective. In March 2024, the Applicant further revised the proposed site plan to eliminate a driveway on Harmony Road North and instead increase the amount of landscaped open space in the development proposal.

On April 29, 2024, Council considered Report ED-24-42 dated April 3, 2024, Memorandum CNCL-24-46 and correspondence provided by the M.V.N.A. in opposition to the revised applications. At this meeting, Council voted to adopt the recommendation of Report ED-24-42 to approve the revised applications submitted by the Applicant to permit the proposed development.

On May 21, 2024, an appeal was received regarding the passing of the zoning by-law amendment pursuant to Section 34(19) of the Planning Act. May 21, 2024 was the last day to file an appeal. On May 21, 2024, Section 34(19) of the Planning Act allowed a person or public body to appeal a zoning by-law amendment to the O.L.T. provided they made an oral submission at a public meeting or provided written submissions to Council prior to the passing of the amending by-law.

Attachment 1 is a copy of the appeal letter dated May 21, 2024 submitted by WeirFoulds LLP on behalf of the M.V.N.A.

On June 6, 2024, the Provincial government passed Bill 185, Cutting Red Tape to Build More Homes Act, 2024 ("Bill 185"). Bill 185 amended the Planning Act to remove the right of any interested person or public body that provided written or oral comments on a proposed zoning by-law amendment to appeal the passing of a zoning by-law amendment to the O.L.T. within 20 days of the date the notice of passing of the zoning by-law was issued. Although the appeal was filed before June 6, 2024, Bill 185 had the effect of

automatically dismissing any appeal that did not have a merit hearing before April 10, 2024 unless the appeal was filed by the applicant, the Minister of Municipal Affairs and Housing, a public body (e.g. a municipality, a provincial government) or a specified entity (e.g. an electric utility company, Hydro One Inc., pipeline company, a railway company, etc.).

Consequently, the appeal by the M.V.N.A. has been automatically dismissed as of June 6, 2024 due to the changes to the Planning Act under Bill 185. As a result, the zoning by-law amendment came into effect on June 6, 2024 (the day Bill 185 received Royal Assent and automatically dismissed the appeal).

Staff have contacted the O.L.T. to inquire as to whether affected appellants will be formally notified by the O.L.T. that their appeals have been dismissed, and are awaiting a response. As a courtesy, staff will advise the M.V.N.A. on June 13, 2024, directly following the distribution of this Report to members of Council on June 12, 2024.

The related revised draft plan of subdivision application (File: S-O-2022-04) will now be approved by the Director, Planning Services, and notice of decision will be distributed in accordance with the Planning Act. The Planning Act was amended several years ago to remove the right for third parties such as the M.V.N.A. to appeal the approval of a draft plan of subdivision.

#### **4.0 Financial Implications**

There are no financial implications associated with this Report.

#### **5.0 Relationship to the Oshawa Strategic Plan**

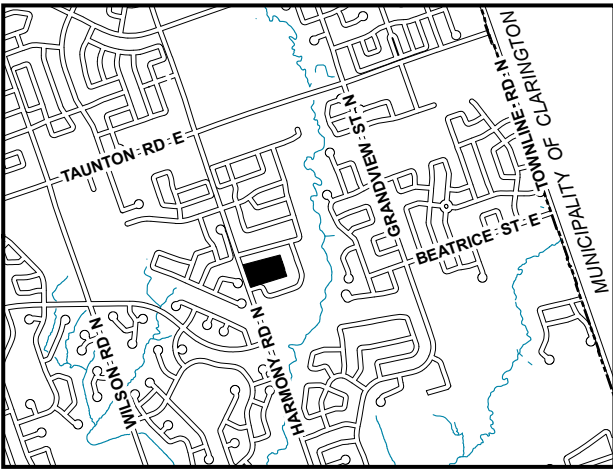
This Report meets the Oshawa Strategic Plan goal of Accountable Leadership by ensuring respect, responsiveness and transparency.



Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,  
Planning Services



Anthony Ambra, P.Eng., Commissioner,  
Economic and Development Services Department



Item: **INFO-24-146**  
**Attachment 1**

Economic and Development Services

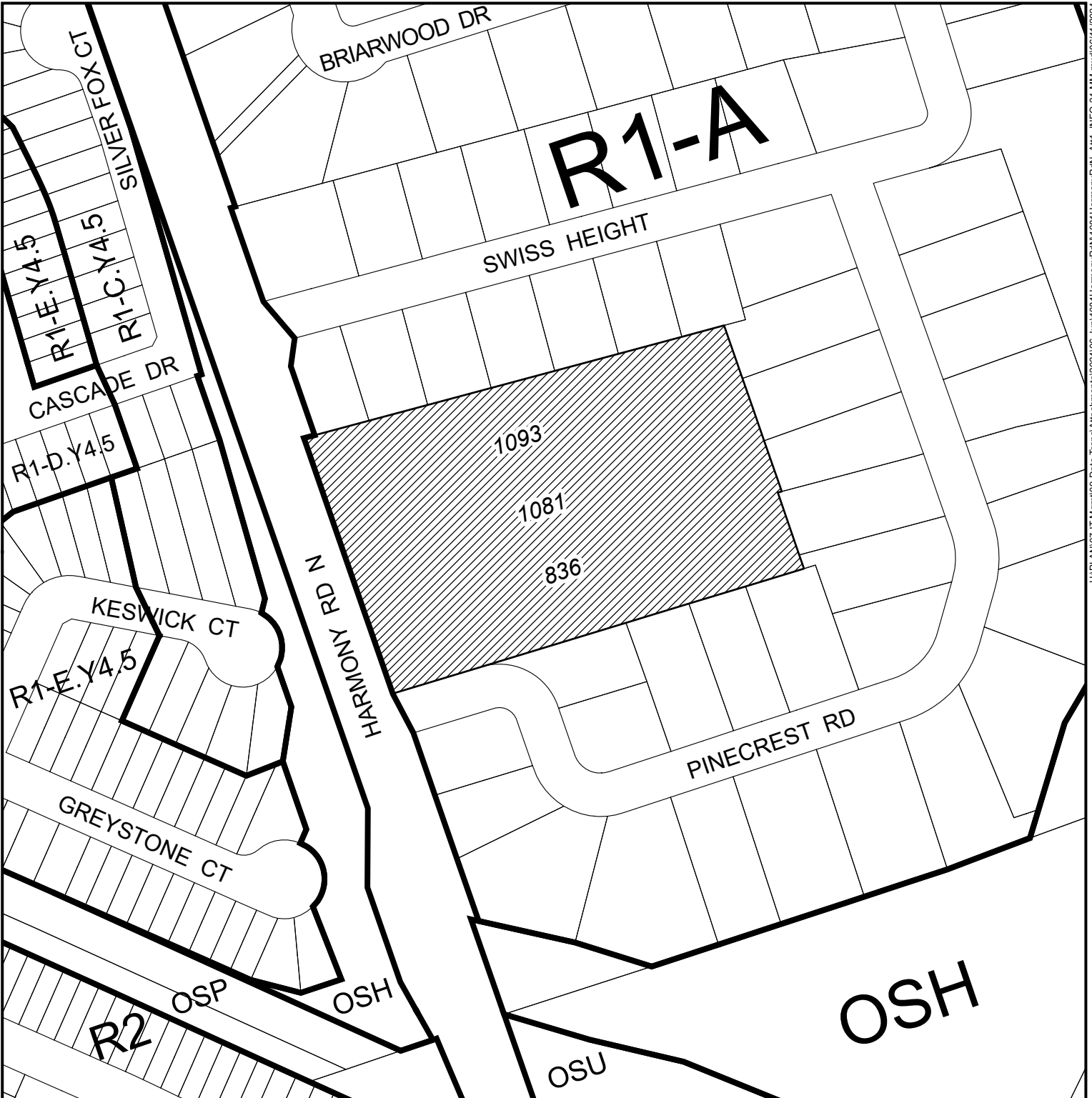
Subject: Appeal to the Ontario Land Tribunal of a Zoning By-law Amendment for 1081 and 1093 Harmony Road North and 836 Pinecrest Road

Ward: Ward 3

File: Z-2022-11



Subject Site 



**Item: INFO-24-146  
Attachment 2**

May 21, 2024

**Raj Kehar**  
Partner  
t. 416-947-5051  
rkehar@weirfoulds.com

**VIA EMAIL AND COURIER**

File No. 25283.00001

Mary Medeiros  
City Clerk  
The Corporation of the City of Oshawa  
55 Centre St. S.  
Oshawa, ON L1H 3Z7

Dear Ms. Medeiros:

**Re: Notice of Appeal pursuant to subsection 34(19) of the *Planning Act*, R.S.O., 1990,  
c. P.13, as amended  
Zoning By-law 59-2024  
1081 and 1093 Harmony Road North and 836 Pinecrest Road, Oshawa**

We are counsel to Matthew Davison, Andrew Beacom, and an entity to be incorporated known as the Maxwell Village Neighbourhood Association (collectively the “**Clients**”), with respect to the above-referenced matter.

Our Clients hereby appeal the City of Oshawa’s (the “**City**”) passing of zoning by-law 59-2024 (the “**Zoning By-law Amendment**”) pursuant to subsection 34(19) of the *Planning Act*. The Zoning By-law Amendment amends City of Oshawa Zoning By-law 60-94 to authorize the development of lands at 1081 and 1093 Harmony Road North and 836 Pinecrest Road, Oshawa (the “**Subject Site**”). Our Clients reside in the immediate vicinity of the Subject Site and have several concerns with the proposed development as outlined herein.

Our Clients have been actively involved in the planning process that resulted in the passing of the Zoning By-law Amendment including having made oral submissions at the public meeting and written submissions to Council.

**BACKGROUND**

Icon Harmony Limited (the “**Developer**”) filed applications for a zoning by-law amendment, draft plan of subdivision and draft plan of condominium with respect to the Subject Site to permit a development containing 33 single detached dwellings, 24 semi-detached dwellings and 21 block

townhouse dwellings (78 dwellings in total) (the “**Proposed Development**”). There are new proposed private streets and site accesses to the existing public road system.

## REASONS FOR APPEAL

Our Clients are concerned that the feasibility of the transportation approach has not been satisfied, and therefore, the Zoning By-law Amendment should not have been passed. The proposed access points and provision of vehicles in the area will create safety concerns both for existing residents within the surrounding community and future residents of the Subject Site.

Our Clients submit that, among other issues, the Proposed Development would cause the actual space available for vehicular and pedestrian traffic to be significantly narrower due to elevation differences along the segment between Harmony Road and Pinecrest Road. The presence/need of multiple retaining walls, grading requirements, cross-slope issues, and widening needs will pose serious challenges to the neighbourhood.

In terms of transportation access, the intersection distance from a major street like Harmony Road will lead to queuing, conflict, and other traffic operation and safety issues. Ultimately, the proposed Pinecrest access is located only a few meters away from a sharp horizontal curvature, which poses risks such as sightline issues, visibility challenges, sideswipe risks, and potential head-on collisions once the new access is installed. The access on Harmony Road also has various issues that pose safety concerns. These are just to name a few of the issues our Clients foresee with the Proposed Development being approved as is.

In addition to the reasons noted above, our Clients hereby appeal the Zoning By-law Amendment for the following reasons:

- (1) The Zoning By-law Amendment does not have regard to the matters of provincial interest as set out in section 2 of the *Planning Act* including subsections 2(f), (h), (m), (n), (o), (p) and (r).
- (2) The Zoning By-law Amendment is not consistent with the Provincial Policy Statement 2020, including policies 1.1.1.c, 1.1.1.e, 1.1.3.4, 1.6.1 and 1.6.7.1, which set performance standards that discourage land use patterns that may cause environmental or public

health and safety concerns; promote the integration of land use planning, growth management, intensification and infrastructure planning; and ultimately provide for transportation systems that are safe, energy-efficient, facilitate the movement of people and goods, and are appropriate to address projected needs. The Zoning By-law Amendment does not set appropriate development standards that take into consideration the effects that the Proposed Development will cause to its surroundings.

- (3) The Zoning By-law Amendment does not conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020, including policies 3.2.2.2 and 3.2.2.3. The Proposed Development significantly impacts the safety of the environment, particularly with respect to transportation system users, and does not consider the needs and safety of all road users.
- (4) The Zoning By-law Amendment does not conform with the Durham Regional Official Plan (the “**Regional OP**”) or the City of Oshawa Official Plan (the “**OOP**”), including policies therein related to transportation systems.

The transportation access, traffic distribution and traffic infiltration for the Subject Site result in an unsafe environment, raise traffic, design and safety issues and are not appropriate. The Regional OP specifically directs that transportation systems should be integrated, safe, efficient and reliable for all users and modes.

Consequently, the Zoning By-law Amendment does not conform with the policies of the Regional OP, including Section 11 and in particular policies 11.1.1, and 11.3.

Further, the Zoning By-law Amendment does not conform with policies of the OOP, particularly those concerning safe access and transportation, including Chapter 3.0 and in particular policies 3.2.14 and 3.4.1.

- (5) The traffic assessment relied upon for the enactment of the Zoning By-law Amendment has not adequately considered the traffic patterns in the neighbourhood and therefore is inaccurate. The traffic volume on the adjacent roads will drastically increase because of the Proposed Development. The amendments implemented by the Zoning By-law

Amendment facilitate a significant increase in the number of cars that will be circulating in the area and this will pose safety challenges if not appropriately designed.

- (6) The Proposed Development as it is presented is not desirable for the appropriate development of the land. The Proposed Development is not consistent with the principles of good community planning as it is not sensitive to the existing character of the neighbourhood and the existing streetscape.
- (7) Such further and other reasons that we may provide through the hearing of our Clients' appeals.

### **Filing Requirements**

In satisfaction of the Tribunal's filing requirements, enclosed please find the following:

1. A completed OLT Appellant Form (A1);
2. One (1) firm cheque in the amount of \$1,100.00, made payable to the Minister of Finance.

Please acknowledge the receipt and sufficiency of this letter, together with its enclosures, and please provide us with a copy of the municipal record once it has been forwarded to the Tribunal.

Should you have any questions and/or concerns regarding the above and/or enclosed, please do not hesitate to contact the undersigned.

Yours truly,

**WeirFoulds LLP**



**Raj Kehar**  
Partner  
RK/ka  
Encl.