

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



**ISSUE DATE:** July 20, 2022

**CASE NO(S):** OLT-21-001815

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

Applicant and Appellant:	4926 Bathurst Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment
Existing Designation:	Apartment Neighbourhoods
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit a 26 storey mixed use building
Property Address/Description:	4926 Bathurst Street
Municipality:	City of Toronto
Approval Authority File No.:	No. 20 219407 NNY OZ
OLT Case No.:	OLT-21-001815
OLT Lead Case No.:	OLT-21-001815
OLT Case Name:	4926 Bathurst Inc. v. Toronto (City)

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

Applicant and Appellant:	4926 Bathurst Inc
Subject:	Application to amend City of Toronto By-law No. 569-2013, as amended, and the City of North York Zoning By-law 7625, as amended - neglect of the City of Toronto to make a decision
Existing Zoning:	C1 General Commercial (C1)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 26 storey mixed use residential development
Property Address/Description:	4926 Bathurst Street
Municipality:	City of Toronto
Municipality File No.:	No. 20 219407 NNY OZ
OLT File No.:	OLT-21-001816
OLT Lead Case No.:	OLT-21-001815

**PROCEEDING COMMENCED UNDER** subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	4926 Bathurst Inc
Subject:	Site Plan
Property Address/Description:	4926 Bathurst Street
Municipality:	City of Toronto
OLT File No.:	OLT-22-002304
OLT Lead Case No.:	OLT-21-001815

**Heard:** May 6, 2022 via video hearing

## **APPEARANCES:**

### **Parties**

4926 Bathurst Inc.

City of Toronto

4949 Bathurst LP

### **Counsel**

Adrian Frank/Jason Park

Jessica Braun

Mark Flowers

## **MEMORANDUM OF DECISION DELIVERED BY CARMINE TUCCI ON MAY 6, 2022 AND ORDER OF THE TRIBUNAL**

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[1] The matter before the Ontario Land Tribunal (the “Tribunal”), was with respect to the appeals of the refusal of the City of Toronto to make a decision regarding an Application to amend the Official Plan and to amend City of Toronto By-law No. 569-2013, as amended, and the City of North York Zoning By-law No. 7625, as amended

[2] The original development proposal submitted on November 17, 2020, proposes a 26-storey mixed-use building, with retail uses at grade and residential uses above, and with a height of 83.5 metres (89.5 metres including mechanical penthouse) (the “Development Proposal”). Further, the building would have a total gross floor area (“GFA”) of 21,205 square metres, including a retail GFA of 900 square metres, resulting in a density of 8.54 floor space index (“FSI”). It would contain a total of 263 units, of which 3 (1.1 percent) are studio units, 106 (40.3 percent) are one-bedroom units, 127

(48.3 percent) are two-bedroom units and 27 (10.3 percent) are three-bedroom units. The Development Proposal would have 1,056 square metres of amenity space (4.02 square metres per unit), of which 528 square metres will be indoor amenity space (2.01 square metres per unit).

[3] A revised development proposal submitted on June 10, 2021 continues to propose a 26-storey mixed use building, with retail uses at grade and residential uses above and a total height of 83.5 metres (89.5 metres including mechanical penthouse). Aside from a reduction in the floor plate size above Level 12, no significant changes have been made to the massing of the building, which in turn means that there have been no changes to the unit count and unit types and associated building statistics, including vehicular parking, bicycle parking and amenity spaces. Furthermore, the setbacks and stepbacks to both the podium and tower components have been maintained from the initial proposal ("Revised Development Proposal").

[4] The purpose of the Case Management Conference ("CMC") was to receive status updates from both parties to organize the hearing of these appeals.

[5] The Tribunal was presented with two requests for Party status.

[6] Rosanna DelGrosso informed the Tribunal that she will not be represented by counsel nor is she a professional in Land Use Planning. Further, Ms. DelGrosso has yet to decide if she will be presenting any witnesses that may proffer any professional evidence.

[7] The Tribunal denied Ms. DelGrosso's request for Party Status but granted Ms. DelGrosso Participant Status.

[8] 4949 Bathurst LP ("4949"), represented by Mark Flowers sought Party Status. 4949's lands are the same intersection as the Appellant's lands and given that 4949 anticipates making applications for the redevelopment of its lands, 4949 has a direct interest in the proceedings.

[9] The Tribunal granted 4949 Bathurst LP Party Status.

[10] The Tribunal received one request for Participant Status from Metropolitan Toronto Condominium Corporation No. 1000 ("MTCC 1000"). The Tribunal granted MTCC 1000 Participant Status.

[11] Further, at the CMC, Debra Jerome and Amy Goldberg, both area residents, attended seeking Participant Status. Both had not formally submitted their applications for Participant status due to lack of understanding of the OLT procedures.

[12] The Tribunal having heard their submissions, will allow both to be granted Participant Status on the condition that they will file a formal request seeking Participant Status. Should the Tribunal not be in receipt of their Applications, the Tribunal will revoke their status.

[13] Both counsel for the Appellant and the City agreed on consent to all requests for Party and Participant Status.

[14] The Tribunal requests all parties to have an updated Draft Procedural Order submitted by **Monday, May 16, 2022**.

[15] The Procedural Order is now approved as contained in Attachment 1 to this Decision.

[16] The Tribunal informed the Parties that an OLT led mediation is available should they want to continue their efforts to reach an early resolution on this matter. The Parties acknowledged that informal discussions are proceeding and that a potential mediation may be considered.

[17] Failing an early resolution, the Parties have informed the Tribunal that they will require ten (10) days for a hearing of these appeals.

[18] The Tribunal hereby schedules a Video Hearing of these appeals commencing on **Monday, March 20, 2023 at 10 a.m. Ten days have been set aside.**

[19] Parties and participants are asked to log into the video hearing at least 15 minutes before the start of the event to test their video and audio connections:

<https://meet.goto.com/709076365>

**Access code: 709-076-365**

[20] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at GoToMeeting or a web application is available:

<https://app.gotomeeting.com/home.html>

[21] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **+1 (647) 497-9373 or Toll Free at 1-888-299-1889.** The access code is **709-076-365.**

[22] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[23] No further notice will be given

[24] The Member is not seized.

[25] So Orders the Tribunal.

*"Carmine Tucci"*

CARMINE TUCCI  
MEMBER

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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.

**Ontario Land Tribunal**

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**ATTACHMENT 1**

**ISSUE DATE:**

**CASE NO(S):** OLT-21-001815

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

Applicant and Appellant:	4926 Bathurst Inc.
Subject:	Application to amend the former City of North York Zoning Bylaw 7625, as amended - neglect of the City of Toronto to make a decision
Existing Zoning:	C1 General Commercial (C1)
Proposed Zoning:	Site Specific (to be determined)
Purpose:	To permit a 26 storey mixed use residential development
Property Address/Description:	4926 Bathurst Street
Municipality:	City of Toronto
Municipal File No.:	No. 20 219407 NNY OZ

OLT File No.: OLT-21-001816  
 OLT Lead Case No.: OLT-21-001815

### **PROCEDURAL ORDER**

The Tribunal orders that:

1. The Tribunal may vary or add to the directions in this procedural order at any time by an oral ruling or by another written order, either on the parties' request or its own motion.

#### **Organization of the Hearing**

2. The hearing, if required, will commence on March 20, 2023 at 10:00 a.m., at Ontario Land Tribunal, 655 Bay Street, 16th Floor, Toronto, ON M5G 1E5 in the City of Toronto, or virtually by video hearing.
3. The hearing is schedule to proceed by video as follows:  
 [Date ●]  
 GoToMeeting:  
 Access Code:  
 Audio only telephone line:  
 Audio-only access code:
4. The parties' initial estimation for the length of the hearing is 10 days. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible. The length of the hearing may be shortened as issues are resolved or settlement is achieved. The procedural order deadlines are generally found in Attachment "1" to this Order.
5. The parties and participants identified at the Case Management Conference are listed in Attachment "2" to this Order.
6. The Issues are set out in the Issues List referred to below and included as Attachment "3" to this Order. There will be no changes to this list unless the Tribunal permits it, unless such changes reflect the narrowing or elimination of issues, or such changes arise from the submission of revised plans. A party who asks for changes to this list may have costs awarded against it.
7. The order of evidence at the hearing shall be as set out in Attachment "4" hereto. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.
8. All parties and participants (or their representatives) shall provide a mailing address, email address, and a telephone number to the Tribunal as soon as possible. Any such person who retains a representative (legal counsel or agent) subsequent to the first Case Management Conference must advise the other



parties and the Tribunal of the representative's name, mailing address, email address and phone number as soon as possible.

9. If the hearing is to proceed electronically, any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/appeals-process/video-hearing/>).

### **Requirements Before the Hearing**

10. If the applicant intends to seek approval of a revised proposal at the hearing, the applicant shall provide copies of the revised proposal, including all revised plans, drawings, proposed instruments, updated supporting documents and reports, to the other parties on or before October 31, 2022. The applicant acknowledges that any revisions to the proposal after that date without the consent of the parties may be grounds for a request to adjourn the hearing by written motion to the Tribunal in accordance with the Tribunal's Rules (Rule 17).
11. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before November 14, 2022. For expert witnesses, a party is to include a copy of the Curriculum Vitae and the area of expertise in which the witness is proposed to be qualified. Any challenges to the witness, including qualifications of a witness to give opinion evidence in the area of expertise proposed shall be made by motion in accordance with the Tribunal's Rules and notice of same must be served on the other Parties on or before November 25, 2022.
12. Expert witnesses in the same field shall have a meeting on or before December 2, 2022 to try to resolve or reduce the issues for the hearing. Following the experts' meeting, on or before December 16, 2022, the parties must prepare and file a Statement of Agreed Facts and Issues with the OLT case coordinator.
13. The parties shall prepare and file a hearing plan with the Tribunal on or before March 6, 2023, with a proposed schedule for the hearing that identifies, at a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time, prior to, or in the course of the hearing.
14. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in Section 17. Instead of a witness statement, the expert may file his or her entire report if it contains the required

information. If this is not done, the Tribunal may refuse to hear the expert's testimony. For greater certainty, each expert witness statement must comply with the minimum content requirements specified in Rule 7 of the *Tribunal's Rules of Practice and Procedure*. If the expert witness has prepared any report(s) that he/she intends to rely on at the hearing, and which did not form part of the submissions made to the City, such report(s) shall be provided to the other parties at the same as the delivery of expert witness statements, as in Section 17 below.

15. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in Section 17 below. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in Section 17 below.
16. On or before January 20, 2023, a participant shall provide copies of their written participant statement to the other parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
17. On or before January 20, 2023, the parties shall provide copies of their witness and expert witness statements (full disclosure including reports) to the other parties and to the OLT case coordinator, in accordance with Section 25 below.
18. Any party may reply to an expert report, witness statement, outline of expert's evidence or participant statement, provided that such reply is provided to all other parties on or before February 17, 2023.
19. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunals Rules (*Rule 10*).
20. On or before March 6, 2023, the parties shall provide copies of their visual evidence to all of the other parties. The Tribunal and all parties shall be notified if a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
21. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case coordinator on or before March 6, 2023, to be filed in both electronic and hardcopy format in accordance with Section 25 below.
22. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Tribunal and the parties are notified on or before March 13, 2023, that the written evidence will not form part of their record.
23. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. Such a motion shall be in accordance with

the Tribunal's *Rule 10*, which requires that the moving party provide copies of the motion to all other parties at least 15 days before the Tribunal hears the motion.

24. Any documents which may be used by a party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing, pursuant to the directions provided by the OLT case coordinator or as directed by the Tribunal.
25. All filings shall be submitted electronically, to the Tribunal and the Parties, and by hardcopy to the Tribunal if so requested. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the *Rule 7*. All documents to be filed with the Tribunal shall be organized, tabbed and digitally searchable and such materials will be filed in accordance with directions contained in the Tribunal's Video Hearing Guide, dated June 29, 2021, or as may be amended. This Section 25 applies regardless of whether the hearing event is in-person or electronic.
26. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. Tribunal *Rule 17* applies to such requests.
27. The Tribunal may conduct mediation on consent of all parties, on consent of those parties who wish to participate in mediation, or if the Tribunal sees fit.
28. The purpose of this Procedural Order and the meaning of the terms used in this Procedural Order are set out in Attachment "5".

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Members	)	Date:
	)	
	)	

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TRIBUNAL REGISTRAR

**ATTACHMENT “1”**

**SUMMARY OF KEY DATES**

<b><u>Date</u></b>	<b><u>Hearing Event</u></b>
<b>October 31, 2022</b>	Provision of revised proposal – para. 10
<b>November 14, 2022</b>	Exchange of List of Witnesses and the order in which they will be called – para. 11
<b>November 25, 2022</b>	Deadline for motion to challenge witnesses – para. 11
<b>December 2, 2022</b>	Expert Witness Meeting – para. 12
<b>December 16, 2022</b>	Filing of Statement(s) of Agreed Facts and Issues – para. 12
<b>January 20, 2023</b>	Exchange of Participant Statements – paras. 16 Exchange of Witness Statements – paras. 14-17
<b>February 17, 2023</b>	Exchange of Reply Evidence/Statements – para. 18
<b>March 6, 2023</b>	Filing of Hearing Plan – para. 13 Exchange of Visual Evidence – para. 20 Filing of Joint Document Book – para. 21
<b>March 13, 2023</b>	Notification to Tribunal and Parties if witness not to provide oral evidence – para. 22
<b>March 20 to 31, 2023</b>	Contested Hearing (if required) – para. 2

**ATTACHMENT “2”**  
**PARTIES AND PARTICIPANTS**

**PARTIES**

**4926 BATHURST INC.**

**Jason Park / Adrian Frank**

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**4949 BATHURST LP**

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**Debra Jerome**

[NTD: Contact info not yet provided.]

**Amy Goldberg**

[NTD: Contact info not yet provided.]

## ATTACHMENT “3”

### ISSUES LIST

#### Issues of City of Toronto

1. Do the proposed development and zoning by-law amendment represent good planning, have regard to the matters of provincial interest, conform with the Growth Plan, 2019, conform with the Toronto Official Plan, and are they consistent with the Provincial Policy Statement, 2020?
  
2. Land Use  
Is the proposed change in land use designation from Apartment Neighbourhoods to Mixed Use Areas appropriate and/or necessary to permit the proposed development in terms of the applicable policies of the Official Plan to reviewing whether the proposal is appropriate for the subject site?
  
3. Height & Density  
Is the height of the proposed development and for the zoning by-law amendment good planning? Is the proposed height appropriate for the site? In particular:
  - a) Does the proposal have appropriate regard for the Tall Building Guidelines, particularly Guidelines 1.4, and 3.1.1?
  - b) Does the proposal conform with the Toronto Official Plan, particularly polices 3.1.2, 3.1.3, 4.2.2, 4.2.3, and 4.5.2?
  - c) Does the proposal have regard for the *Planning Act*, particularly subsections 2(h) and (p)?
  
4. Built form  
Do the proposed development and zoning by-law amendment provide for a built form that is good planning? Is the proposed built form appropriate in terms of massing and transition? In particular:
  - a) Does the proposal have appropriate regard for the Tall Building Guidelines particularly Guidelines 1.4, 3.1.1 and 3.2.1?
  - b) Does the proposal conform with the Toronto Official Plan, particularly polices 3.1.1, 3.1.2, 3.1.3, 4.2.2, 4.2.3, and 4.5.2?
  - c) Does the proposal have regard for the *Planning Act*, particularly subsections 2(h) and (p)?

5. Transportation

Is the proposed parking supply sufficient to accommodate parking demand for the proposed residential building?

6. Site Plan Appeal

Have all matters related to site plan been appropriately addressed? Should conditional site plan approval be given? What conditions should be applied to such approval?

7. Order if approved

In the event the proposed development is approved in whole or in part, should the Tribunal Order be withheld until the following conditions are satisfied:

- a) The official plan and zoning by-law amendment has been prepared in a content and form satisfactory to the City Solicitor and the Chief Planner and Executive Director, City Planning;
- b) The owner has addressed all outstanding issues raised by Engineering and Construction Services as they relate to the Official Plan and Zoning By-law Amendment application, to the satisfaction of the Chief Engineer and Executive Director, Engineering and construction Services; and
- c) The owner has entered into, and registered on title to the lands, an agreement with the City pursuant to section 37 of the *Planning Act* if applicable, to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, securing community benefits and other matters in support of the development.

**ATTACHMENT “4”**  
**ORDER OF EVIDENCE**

1. 4926 Bathurst Inc.
2. 4949 Bathurst LP
3. City of Toronto
4. Reply by 4926 Bathurst Inc. (if any)



## ATTACHMENT “5”

### **Purpose of the Procedural Order and Meaning of Terms**

**Party** is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an unincorporated group wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

**NOTE** *that a person who wishes to become a party before or at the hearing, and who did not request this at the Case Management Conference, must ask the Tribunal to permit this.*

**Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a written statement to the Tribunal on all or some of the issues in the hearing in accordance with Rule 7.7 of the Tribunal’s Rules of Practice and Procedure.

**NOTE** *that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can.*

### **Written and Visual Evidence:**

**Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

**Visual evidence** includes photographs, maps, videos, models, and overlays which a party intends to present as evidence at the hearing.

### **Witness Statements:**

A **witness statement** is a short written outline of the person’s background, experience and interest in the matter; a list of the issues which the witness will discuss and the witness’ opinions on those issues; and a list of reports that the witness will rely on at the hearing.

An **expert witness statement** should include the expert’s (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness’ opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, relied upon, if any, which the participant will provide to the Tribunal for consideration of the written statement at the hearing.

### **Additional Information:**

**Summons:** A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties (see Rule 13 on the summons procedure). If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

**The order of examination of witnesses:** is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.