

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 05, 2022 **CASE NO(S):** OLT-22-003888

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

Applicant and Appellant: Wilson St. Ancaster Inc.
Subject: Request to amend the Official Plan – Refusal of request by the City of Hamilton
Existing Designation: Low Density Residential 1
Proposed Designation: Mixed Use - Medium Density designation with a Pedestrian Focus
Purpose: To permit an eight-storey mixed use development
Property Address/Description: 392-412 Wilson Street East & 15 Lorne Avenue
Municipality: City of Hamilton
Approval Authority File No.: UHOPA-22-004
OLT Lead Case No.: OLT-22-003888
OLT Case No.: OLT-22-003888
OLT Case Name: Wilson St. Ancaster Inc. v. Hamilton (City)

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

Applicant and Appellant: Wilson St. Ancaster Inc.
Subject: Application to amend Zoning By-law No. 05-200 – Refusal of application by City of Hamilton
Existing Zoning: "ER" Zone, the Mixed-Use Medium Density - Pedestrian Focus (C5a, 570) Zone, and the Mixed-Use Medium Density - Pedestrian Focus (C5a, 570, 651) Zone
Proposed Zoning: Modified Mixed Use Medium Density - Pedestrian Focus (C5a) Zone
Purpose: To permit an eight-storey mixed use development
Property Address/Description: 392-412 Wilson Street East & 15 Lorne Avenue
Municipality: City of Hamilton
Municipal File No.: ZAC-22-011
OLT Lead Case No.: OLT-22-003888

OLT Case No.: OLT-22-003889

Heard: October 14, 2022 by video hearing

APPEARANCES:

Parties

Counsel

Wilson St. Ancaster Inc.
("Appellant")

P. Harrington

City of Hamilton (the "City")

R. McVean
P. MacDonald (in absentia)

**MEMORANDUM OF ORAL DECISION DELIVERED BY D. ARNOLD AND
T. PREVEDEL ON OCTOBER 14, 2022 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This first Case Management Conference ("CMC") was held to prepare for a hearing on the merits of the Appellant's appeals to the Tribunal of the City's refusal of an application for an Official Plan Amendment to the City's Official Plan and an application for a Zoning By-law Amendment to the City's Zoning By-law to permit the redevelopment of the lands municipally known as 392, 398, 400, 402, 406, 412 Wilson Street East and 15 Lorne Avenue in the City of Hamilton (the "Subject Property") with an eight (8)-storey mixed use building (the "Applications").

[2] The hearing event was conducted by a two-Member Panel composed of Member Arnold and Member Prevedel. As a result of the sudden and unfortunate passing of Member Prevedel following the CMC on October 14, 2022, and prior to the issuance of this Memorandum of Oral Decision and Order, in accordance with section 4.4 of the *Statutory Powers Procedure Act*, the remaining member of the Panel herein provides this Memorandum of Oral Decision and Order on behalf of the Tribunal in order to complete the hearing process

PROCEDURAL MATTERS

[3] The Tribunal entered the Affidavit of Service of Tarah Coutts sworn September 20, 2022 as Exhibit 1 to the CMC and is satisfied that same demonstrates proper notice in these proceedings such that no further notice is required.

[4] The Appellant filed appeals with the Tribunal pursuant to Section 34(11.0.0.0.1) on May 7, 2022 on the basis of the City's failure to make a decision on the Applications within the statutory time period. Subsequently, upon the City's Council rendering a decision to refuse the Applications at its meeting of May 11, 2022, the Appellant filed appeals with the Tribunal pursuant to Sections 22(7) and 34(11) of the City's decision to refuse the Applications (the "Appeals"). Counsel for the Appellant advised the Tribunal at the CMC that the Appellant would provide the Tribunal and the City with written notification of its withdrawal of its appeals made pursuant to Section 34(11.0.0.0.1) and proceed with its appeals made pursuant to Sections 22(7) and 34(11). Counsel for the City advised of no objection to the foregoing course of action.

PARTY AND PARTICIPANT STATUS

[5] There were no requests for Party status in these proceedings.

[6] There were two (2) requests for Participant status submitted to the Tribunal in respect of these proceedings by the following persons:

1. **Ancaster Village Heritage Community ("AVHC")** - The Tribunal is in receipt of a written request for Participant Status from AVHC in which certification is provided that James McLeod is the authorized representative of AVHC. Mr. McLeod appeared at the CMC and identified himself as the Vice-President, Treasurer and a Director of AVHC. AVHC raises issues concerning the conservation of heritage assets and support of "positive development" in the Ancaster Village Core in connection with proposed development contemplated by the Applications. The Tribunal is satisfied that AVHC is

raising genuine land use planning issues regarding the proposed redevelopment and, on consent of the Parties, the Tribunal grants Participant status to AVHC.

2. **Lilian Druiven** – The Tribunal is in receipt of a written request for Participant Status from Lilian Druiven stating that Ms. Druiven resides at the property municipally known as 20 Lorne Avenue and which is adjacent to the Subject Property. Ms. Druiven raised concerns relating to traffic, noise and shadow impacts in respect of the proposed redevelopment. The Tribunal is satisfied that Ms. Druiven is raising genuine land use planning issues regarding the proposed redevelopment and, on consent of the Parties, the Tribunal grants Participant status to Lilian Druiven.

PROCEDURAL ORDER

[7] A draft Procedural Order including the draft Issues List was not provided for consideration at this CMC. The parties were directed to provide a draft Procedural Order to the Tribunal on or before **Monday, November 14, 2022**.

[8] A draft Procedural Order was subsequently provided to the Tribunal as requested at the CMC and the finalized Procedural Order for this matter attached as **Schedule A** to this Order is approved.

HEARING DATES

[9] The Appellant and the City estimate that ten (10) hearing days will be required for the hearing of the Appeals, indicating that they estimate a total of 6-7 expert witnesses will be called to provide evidence at the hearing of the appeals, with such witnesses to address land use planning, urban design and heritage matters. The Tribunal concurs with this estimate of hearing days.

[10] The hearing by video will commence on **Monday, July 24, 2023 at 10 a.m.** for

ten (10) days and in accordance with the provisions of the Procedural Order approved pursuant to this Order.

[11] 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://global.gotomeeting.com/join/660145013>

Access code: 660-145-013

[12] 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>

[13] 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 1-888-299-1889**. The access code is **660-145-013**.

[14] 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.

ORDER

[15] The Tribunal so orders and provides these CMC directives for the purposes of the case management of these appeals.

[16] The remaining Panel Member is not seized in this matter but will remain available for continued case management to the extent that the Tribunal calendar permits.

[17] No further notice will be given.

"D. Arnold"

D. ARNOLD
MEMBER

Ontario Land Tribunal

Website: 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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SCHEDULE A

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

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Municipal File No.: ZAC-22-011
OLT Lead Case No.: OLT-22-003888
OLT Case No.: OLT-22-003889

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 video hearing will begin on July 24, 2023 at **10:00 AM**.
3. 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
4. The parties and participants identified at the case management conference are set out in **Attachment 2** (see the sample procedural order for the meaning of these terms).
5. The issues are set out in the Issues List attached as **Attachment 3**. Except as permitted in paragraph 9 below, there will be no further changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in **Attachment 4** to this Order. 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 the parties' consent, subject to the Tribunal's approval, or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. 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.

Requirements Before the Hearing

9. Within 30 days of the issuance of this Procedural Order by the Tribunal, the parties may provide a proposed revised issues list to the Tribunal for consideration by the Tribunal as an amendment to this Order that may be required as a result of the

impact, if any, of the decision of the Minister of Municipal Affairs and Housing dated November 4, 2022 with respect to Amendment No. 167 to the Urban Hamilton Official Plan.

- 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 March 6, 2023. The applicant acknowledges that any revisions to the proposal after that date without the consent of the Parties may be grounds for the Tribunal to adjourn the hearing.
- 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 May 5, 2023 and in accordance with paragraph 24 below. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
- 12.** Expert witnesses in the same field shall have a meeting on or before May 25, 2023 and use best efforts to try to resolve or reduce the issues for the hearing. Following the experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the OLT case co-ordinator on or before June 5, 2023.
- 13.** An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in paragraph 15 below. 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.
- 14.** 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 paragraph 15 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 paragraph 15 below.
- 15.** On or before June 14, 2023, the parties shall provide copies of their witness and expert witness statements to the other parties and to the OLT case co-ordinator and in accordance with paragraph 24 below.
- 16.** On or before June 14, 2023, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 24 below. 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 June 26, 2023, the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
18. On or before July 10, 2023, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 24 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
19. On or before July 10, 2023, the parties shall provide copies of their reply statements (if any) to all of the other parties in accordance with paragraph 24 below.
20. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case co-ordinator on or before July 10, 2023, being at least 10 days prior to the start of the hearing.
21. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. *See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.*
22. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.
23. The parties shall prepare and file a preliminary [hearing plan](#) with the Tribunal on or before July 17, 2023 with a proposed schedule for the hearing that identifies, as 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 in the course of the hearing.
24. All filings shall be submitted electronically and in hard copy. 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*.

25. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member:

Date:

TRIBUNAL REGISTRAR

Attachment 1

Summary of Dates

DATE	EVENT
Within 30 days of issuance of Procedural Order	A party may provide a revised issues list.
March 6, 2023 (100 days before exchange of expert witness statements)	Submission of revised proposal, including all revised plans and drawings, if any.
May 5, 2023 (80 days before hearing)	Exchange of witness lists (including names, disciplines and proposed order to be called).
May 25, 2023 (60 days prior to hearing)	Experts meeting prior to this date.
June 5, 2023 (50 days prior to hearing)	Exchange of agreed statement of facts, if any.
June 14, 2023 (40 days prior to hearing)	Exchange of witness statements and expert witness statements. Exchange of participant statements.
June 26, 2023 (30 days prior to hearing)	Confirmation that all hearing dates are required
July 10, 2023(15 days prior to hearing)	Exchange of reply statements, if any. Exchange of visual evidence, if any.
July 10, 2023 (10 days prior to hearing)	Finalize and file joint document book.
July 17, 2023 (7 days prior to the hearing)	File hearing plan with the Tribunal
July 24, 2023	Hearing commences

Attachment 2
List of Parties and Participants

Parties:

Wilson St. Ancaster Inc.

Aird & Berlis LLP

Brookfield Place, 181 Bay Street, Suite 1800
Toronto ON M5J 2T9

Patrick J. Harrington
Tel: 416.865.3424
Email: pharrington@airdberlis.com

Matthew Helfand
Tel: 416.865.4624
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City of Hamilton

71 Main St. W, 1st Floor
Hamilton, ON L8P 4Y5

Patrick MacDonald
Tel: 905.546.2489
Email: Patrick.MacDonald@hamilton.ca

Participants:

Ancaster Village Heritage Community

20 Rousseaux Street
Ancaster, ON L9G 2W5
Attention: James MacLeod, Vice-President
Tel: 905 304-1295
Email: admin@saveancaster.com

Lilian Druiven

20 Lorne Avenue
Ancaster, ON L9G 2X7
Tel: 905 648-7684
Email: mdruiven@gmail.com

Attachment 3

Issues List

City of Hamilton Planning

1. Is the development proposal consistent with the Provincial Policy Statement (2020) (“PPS”) in terms of accommodating an appropriate range and mix of residential types and densities, promoting well designed built form, coordinating land use and infrastructure, conserving significant built heritage resources, and addressing environmental site conditions, including but not limited to policies 1.1.1, 1.1.3.2b), 1.1.3.3, 1.1.3.4, 1.4.3, 1.5.1, 1.2.6.1, 2.6.1, 2.6.2, 2.6.3, and 3.2.2?
2. Does the development proposal conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019, as amended) in terms of achieving complete communities by providing a diverse mix and range of housing options and coordination of land use and infrastructure, including but not limited to policies 2.2.1.4 and 3.2.1.1?
3. Does the development proposal conform to the Niagara Escarpment Plan (2017) in terms of height, setbacks, screening, and visual impact, including but not limited to policy 1.7.5.1, and Urban Hamilton Official Plan (“UHOP”) policies C.1.1.1 and C.1.1.6?
4. Does the development proposal comply with the Mixed Use - Medium Density Designation of the UHOP, in terms of form, scale and design, including but not limited to Volume 1 policies E.4.6.9, E.4.6.15, E.4.6.16, E.4.8.17, E.4.6.18?
5. Does the development proposal provide for a compatible integration with the surrounding area in terms of scale, form, and character and meet the residential intensification tests of the UHOP, in terms of establishing a relationship that maintains, enhances, and builds upon the existing neighbourhood character and contributes to maintaining and achieving an appropriate range and mix of dwelling types and tenures, including but not limited to PPS Policy 1.2.6.1 and UHOP Volume 1 policies B.2.4.1.4? Specifically, does the proposal address matters such as:
 - a. Building height;
 - b. Residential density;
 - c. Massing;
 - d. Privacy;
 - e. Overlook;
 - f. Setbacks; and,
 - g. Compatibility with and enhancement of the character of the existing neighbourhood?
6. Does the development proposal comply with the Ancaster Wilson Street Secondary Plan in terms of intensification and infill development, cultural

heritage, urban design, height, massing, scale, density, setbacks, and parking for the Ancaster Community Node and the Village Core Area of the Mixed Use - Medium Density Designation, Pedestrian Focus Streets, including but not limited to UHOP Volume 2 policies B.2.8.6.1, B.2.8.8.4, B.2.8.8.5, B.2.8.12.1, B.2.8.13.1, and B.3.4.6.2?

7. Does the cumulative effect of the proposed zoning modifications, including increased height and density, modified façade height and built form, and reduced setbacks and landscaped planting strips, respect and maintain or enhance the existing character of the area?
8. Are the proposed site specific performance standards compatible and in keeping with the intent of Hamilton Zoning By-law No. 05-200?
9. What is the appropriate form and content of the proposed zoning by-law amendment?
10. Is a holding provision appropriate for the proposed development, and if so, what are the appropriate provisions to include?
11. Does the proposed development represent good land use planning and is it in the public interest?

Engineering

12. Does the proposed development support the existing infrastructure including the existing sanitary sewer pumping station and force main, including but not limited to UHOP Volume 1 policy C.5.3.11 and C.5.3.15?
13. Has the proponent demonstrated that the proposed development does not negatively impact the existing infrastructure in accordance with Policies B.2.4.1.4 f) and B.2.4.2.2 j)?
14. Does the proposal satisfy all requirements and comments identified by Development Approvals including but not limited to grading, stormwater management and servicing and compliance with UHOP policies C.4.0 and C.5.0?
15. Is there sufficient sanitary sewer capacity for the proposal?
16. Is there sufficient water service capacity for the proposal?
17. Does the functional servicing report submitted by the applicant adequately address issues 12-16?

Transportation

18. Does the proposed development conform with the UHOP Volume 1 policies and Schedule C-2 relating to dedication of right-of-way and daylight triangles?
19. Would the proposed development result in a functional road network to safely support the anticipated traffic associated with the development proposal by preventing or satisfactorily mitigating adverse impacts, including but not limited to access, road infrastructure improvements, traffic calming, signalization, site layout, pedestrian facilities, transit amenities, and commercial vehicle maneuverability?
20. Does the proposed development conform to zoning by-law parking requirements and is the proposed reduction supported by any evidence (supporting study) or adequate mitigation measures?

Attachment 4
Order of Evidence

1. Appellant
2. City of Hamilton
3. Appellant reply (if necessary)

Attachment to Sample Procedural Order

Meaning of terms used in the Procedural Order:

A **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. An **unincorporated group** cannot be a party and 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 authorisation 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 (CMC), must ask the Tribunal to permit this.

A **participant** is an individual or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant 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 or participant intends to present as evidence at the hearing.

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 he or she will discuss; and a list of reports or materials that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (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 supporting their opinions and conclusions and (5) a list of reports or materials that the witness will rely on at the hearing. An expert witness statement must be accompanied by an acknowledgement of expert's duty.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a statement of the participant's position on the appeal; a list of the issues which the participant wishes to address and the submissions of the participant on those issues; and a list of reports or materials, if any, which the participant wishes to refer to in their statement.

Additional Information

A **summons** may compel the appearance of a person before the Tribunal who has not agreed to appear as a witness. A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons through a request. (See [Rule 13](#) on the summons procedure.) The request should indicate how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the information provided in the request that the evidence is relevant, necessary or admissible, the party requesting the summons may provide a further request with more detail or bring a motion in accordance with the Rules.

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.