

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



**ISSUE DATE:** January 03, 2024

**CASE NO(S):**

OLT-22-004758

**PROCEEDING COMMENCED UNDER** subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant	Canadian National Railway Company
Applicant	Jamesville Redevelopment Limited Partnership
Subject:	Proposed Official Plan Amendment
Description:	To permit construction of a 447 residential unit development consisting of stacked townhouses and 7-storey multiple dwellings.
Reference Number:	UHOPA-21-014
Property Address:	405 James Street N
Municipality/UT:	Hamilton/Hamilton
OLT Case No:	OLT-22-004758
OLT Lead Case No:	OLT-22-004758
OLT Case Name:	Canadian National Railway Company v. Hamilton (City)

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

Subject:	Zoning By-law Amendment
Description:	To permit construction of a 447 residential unit development consisting of stacked townhouses and 7-storey multiple dwellings.
Reference Number:	ZAC-21-031
Property Address:	405 James Street N
Municipality/UT:	Hamilton/Hamilton
OLT Case No:	OLT-22-004759
OLT Lead Case No:	OLT-22-004758

**Heard:**

December 20, 2023 by video hearing

**APPEARANCES:**

<b><u>Parties</u></b>	<b><u>Counsel/Representative*</u></b>
Canadian National Railway Company	Katarzyna Sliwa, Jessica Jakubowski, Max Reedijk
Jamesville Redevelopment Limited Partnership	Russell Cheeseman, Stephanie Fleming
City of Hamilton	Patrick MacDonald, Brian Duxbury ( <i>in absentia</i> )
City Housing Hamilton Corporation ( <i>in absentia</i> )	Peter Vander Klippe*, Mark Abradjian ( <i>in absentia</i> )

**MEMORANDUM OF ORAL DECISION DELIVERED ON DECEMBER 20, 2023 BY S. DEBOER AND ORDER OF THE TRIBUNAL**


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**INTRODUCTION**

[1] This decision arises from the third Case Management Conference (“CMC”) held in preparation for a hearing of the merits of the Appeal by the Canadian National Railway Company (“Appellant”) pursuant to s. 17(24) and s. 34(11) of the *Planning Act* against the City of Hamilton’s (“City”) approval of the Official Plan Amendment Application (“OPA”) and the Zoning By-law Amendment Application (“ZBA”) for the property municipally known as 405 James Street North in the City of Hamilton (“Subject Lands”).

[2] The purpose of this CMC is, firstly, to receive an update from the Parties concerning the assessment for Tribunal-led mediation, and, secondly, to finalize a Procedural Order and Issues List that is to be used to govern the merits hearing.

**BACKGROUND**

[3] The OPA permits a 447-unit residential development on the Subject Lands, consisting of 14 three-storey (13.0 metre) multiple dwellings (stacked townhouses) and

two seven-storey (24.0 metre) multiple dwellings with a total of 334 parking spaces. The applications redesignate the Subject Lands from "Medium Density Residential 1" to "Medium Density Residential 2" and establish a Special Policy Area on Schedule "M-2" to increase the permitted density to be 205 units per gross hectare, whereas 60-150 units per gross hectare was permitted.

[4] The ZBA changes the zoning of the Subject Lands from "DE/S-65" (Low Density Multiple Dwellings) District to a site-specific Transit Oriented Corridor Multiple Residential Zone (TOC3, 811, H128).

[5] The Appellant filed an appeal stating that *inter alia*, the approved OPA and ZBA are not consistent with the Provincial Policy Statement, 2020, ("PPS"), the Growth Plan for the Greater Golden Horseshoe Area and the federal regulations under which the Appellant must operate.

## **PARTY AND PARTICIPANT REQUESTS**

[6] The Tribunal did not receive any further Party or Participant requests prior to, or during the CMC.

## **PROCEDURAL ORDER, ISSUES LIST AND RESOLUTION OPPORTUNITES**

[7] A draft Procedural Order and Issues List was received by the Tribunal prior to the commencement of the CMC. The Parties discussed the draft Procedural Order and Issues List with the Tribunal during the CMC. After review of the Procedural Order, the Tribunal approves of its contents to govern the upcoming Merits Hearing.

[8] It was noted that the Parties have entered into Tribunal-led mediation. The first occurrence of the Tribunal-led mediation was in October 2023.

[9] The Tribunal asked the Parties if mediation would be continuing, the Parties confirmed that further Tribunal-led mediation would occur in early 2024. The Parties

believed that, at a minimum, the number of issues could be reduced by the time of the Merits Hearing.

## **SCHEDULING OF HEARING**

[10] The Tribunal has verified that the previously scheduled hearing of the merits will proceed as scheduled by video conference beginning on **Tuesday, May 21, 2024, at 10 a.m.** for a duration of nine days. Specific coordinates for the merits hearing are provided below.

### **Hearing of the Merits**

**Tuesday, May 21, 2024, at 10 a.m.**

**GoTo Meeting:** <https://meet.goto.com/348282861>

**Access code:** 348-282-861

**Audio-only line:** (Toll Free) 1 888 299 1889 or +1 (647) 497-9373

[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.

[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.

[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 ORDERS** that a Hearing of the Merits will commence on **Tuesday, May 21, 2024**, at **10 a.m.** for a duration of nine days.

[16] The Procedural Order, attached as Schedule 1, is to govern the procedures leading up to and including the Video Hearing, and is in full force and effect on the issue date of this Order.

[17] There will be no further notice.

[18] The Member is not seized.

*"S. deBoer"*

S. DEBOER  
MEMBER

## **Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.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

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5

Tel: 416-212-6349 | 1-866-448-2248

Web Site: olt.gov.on.ca

## **SCHEDULE 1**

**CASE NO(S):** OLT-22-004758

**PROCEEDING COMMENCED UNDER** subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended.

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Subject:	Proposed Official Plan Amendment
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Subject:	Zoning By-law Amendment
Description:	To permit construction of a 447 residential unit development consisting of stacked townhouses and 7-storey multiple dwellings.
Reference Number:	ZAC-21-031
Property Address:	405 James Street N
Municipality/UT:	Hamilton/Hamilton
OLT Case No:	OLT-22-004759
OLT Lead Case No:	OLT-22-004758

## **PROCEDURAL ORDER**

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 May 21, 2024 at 10:00 a.m., for a duration of 9 days, at the following electronic link:

<https://meet.goto.com/348282861>

3. The Parties' initial estimation for the length of the hearing is 9 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 1**.
5. The issues are set out in the Issues List attached as **Attachment 2**. There will be no 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 3** 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. A summary of the applicable procedural dates, as outlined at paragraphs 10-24 of this Order, is set out in **Attachment 4**.
8. 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.
9. 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

10. 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 **January 22, 2024** and in

accordance with paragraph 23 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.

11. Expert witnesses in the same field shall have a meeting on or before **February 21, 2024**, 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 **March 12, 2024**.
12. 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 14 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.
13. 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 14 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 14 below.
14. On or before **March 22, 2024**, 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 23 below.
15. On or before **March 22, 2024**, a Participant shall provide copies of their written Participant Statement to the other Parties in accordance with paragraph 23 below. A Participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
16. Parties may provide to all other Parties and the OLT Case Co-ordinator a written response to any written evidence no later than **April 22, 2024**, and in accordance with paragraph 23 below.
17. On or before **April 16, 2024**, the Parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
18. On or before **May 6, 2024**, the Parties shall provide copies of their visual evidence to all of the other Parties in accordance with paragraph 23 below. If a model will be used, all Parties must have a reasonable opportunity to view it before the hearing.



19. The Parties shall cooperate to prepare a joint document book which shall be shared with the OLT Case Co-ordinator on or before **May 10, 2024**.
20. 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.*
21. 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.
22. The Parties shall prepare and file a preliminary [hearing plan](#) with the Tribunal on or before **May 14, 2024**, 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.
23. All filings shall be submitted electronically. 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 *Rule 7*.
24. 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.**

## **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.*

**Attachment 1****List of Parties and Participants****1. Canadian National Railway Company (Appellant)**

Katarzyna Sliwa & Max Reedijk

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**2. City of Hamilton (Municipality)**

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**3. Jamesville Redevelopment Limited Partnership (Applicant)**

Russell Cheeseman & Stephanie Fleming

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**4. CityHousing Hamilton Corporation (Party)**

Mark Abradjian

Ross & McBride LLP

905.526.9800

[mabradjian@rossmcbride.com](mailto:mabradjian@rossmcbride.com)

## Attachment 2

### Issues List

***The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Tribunal at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Tribunal at the hearing will be a matter of evidence and argument at the hearing. The parties shall an opportunity to revise and further scope the Issues List following Tribunal-led mediation, which is anticipated to take place in the Fall of 2023.***

### Issues List of Canadian National Railway Company

#### Land Use Policies

1. Do the proposed Official Plan Amendment (“OPA”) and (“ZBA”):
  - a. Have sufficient regard to matters of provincial interest as outlined in sections 2 (f), (h), (k), (l), (m), (n), (o), (p), (r) and (s) of the Planning Act?
  - b. conform with the Provincial Policy Statement 2020 (“PPS”), specifically whether or not a planning authority is required to protect for the ultimate capacity of the rail facility and major goods movement facility in an ultimate configuration, and policies including: 1.1.1 a), c), g), 1.1.2, 1.1.3.2 a), b), c), g), 1.1.3.4, 1.2.1 a), b), d), f), 1.2.3, 1.2.6, 1.3.1, 1.3.2.1, 1.3.2.6, 1.3.2.7, 1.4.3 (f), 1.6.1, 1.6.4, 1.6.7.1, 1.6.7.2, 1.6.7.3, 1.6.8, 1.6.9.1, 1.7.1 a), c), g); 1.8, 2.4.1, 2.4.2, 3.0, 4.0, 4.5 and associated definitions.
  - c. conform with the Growth Plan for the Greater Golden Horseshoe, 2020 in particular sections:
    - i. 1.2, 1.2.1, page 6 paragraph 9, 1.2.3, 2.1, 2.2.1.2, 2.2.1.3 (c); 2.2.1.4, 2.2.2.3, 2.2.2.4, 2.2.4.9, 2.2.5.1, 2.2.5.2, 2.2.5.3, 2.2.5.5, 2.2.5.6, 2.2.5.7, 2.2.5.8, 3.1, 3.2.1, 3.2.2.1, 3.2.2.2, 3.2.2.4, 3.2.4.1, 3.2.4.2, 3.2.4.3, 3.2.5.1, 3.2.5.2, 4.2.10.1 (c), 5.2.3.1, 5.2.4.3, 5.2.4.5, 5.2.4.6, 5.2.5.1, 5.2.5.3, 5.2.5.4, 5.2.5.8, 7 and Schedules 2, 4, 5 and 6.
  - d. conform with and have regard to the 2051 Greater Golden Horseshoe Transportation Plan
  - e. conform with Hamilton-Wentworth Official Plan 2003, in particular sections:

- i. Part B – Introduction, Part B 2.2.1, Part B 4.1.1 c, e, B.11.2, C.3.1, C.3.1.1, C.4 3<sup>rd</sup> bullet, C4.3 and C.4.3.7 and associated schedules.
- f. conform with City of Hamilton Official Plan 2006, in particular sections:
  - i. A.2.7.1, A.2.9.3.1.v, vii,, B.3.5, C.7.1vii, C.9.3, C.9.4, C.9.8, C.9.9, C.9.10, C.9.11 and C. 9.12, D.3 and associated schedules.
- g. have regard for the Urban Hamilton Official Plan 2022, in particular sections:
  - i. A.1.4, B.1.0, B.2.4, B.2.4.2.2.b, B.3.1, B.3.1.15.d, B.3.3.2.4 i, B.3.3.1.8, B.3.3.2.9, B.3.3.13, B.3.6.2, B.3.6.3, B.3.6.3.1, B.3.6.3.2, B.3.6.3.3, B.3.6.3.4, B.3.6.3.5, B.3.6.3.7, B.3.6.3.8, B.3.6.3.9, B.3.6.3.10, B.3.6.3.11, B.3.6.3.14, B.3.6.3.15, B.3.6.3.16, B.3.6.3.17, B.3.6.3.18, B.3.6.3.19, B.3.6.3.20, C.3.2.4, C.3.4, C.4.7, C.4.7.1, C.4.7.2, C.4.7.4, E.3.4, E.3.4.6.c, E.3.5, E.5.2.7.1b, E.5.2.7.1c, E.5.2.7.1d, E.5.2.7.1g, E.5.2.7.1h, F.1.5, F1.5.4, F.1.7, F.1.7.1.a, F1.7.5.a, F.1.8.1 and associated schedules
- h. Have regard for the West Harbour (Setting Sail) Secondary Plan (OPA No. 198), including policies: A.6.3.2.2, A.6.2.2.8, A.6.3.3.1.2, A.6.3.3.1.9, A.6.3.3.1.13, A.6.3.3.1.14, A.6.3.3.1.16.2.5, A.6.3.3.1.16.2.6, A.6.3.3.4.1, A.6.3.4.5.1, A.6.3.4.5.2, A.6.3.4.5.3, A.6.3.4.5.4, A.6.3.4.5.5, A.6.3.4.5.6, A.6.3.4.5.8, A.6.3.4.5.9, A.6.3.4.5.11, A.6.3.4.5.12, A.6.3.5.1.2.1, A.6.3.5.1.2.2, A.6.3.5.1.2.3, A.6.3.5.1.2.4, A.6.3.5.2.2, A.6.3.6.1, A.6.3.6.5, A.6.3.7, A.6.3.8.1, A.6.3.8.6, A.6.3.8.7.1, A.6.3.8.7.1, Schedule M-1, Schedule M-2, Schedule M-3
- i. James Street North Mobility Hub Study (August 2014), in particular Section 3.4.2 Focus Area A (includes site) and in the context of section 3.4.4 Focus Area C and community feedback.

## **Railway Operations/Federal Jurisdiction**

2. Do the OPA and ZBA give consideration to CN's statutory rights, obligations and the legislation that governs CN operations including sections 5, 95, 95.1, 95.2, 95.3 and 98 of the *Canada Transportation Act* (S.C. 1996), c. 10 and sections 8 (1), 19, 47.1 of the *Railway Safety Act* (1985, c.32) and associated guidelines and regulations? Specifically, in relation to its mandate to carry products, including dangerous goods, operate a railway, noise, vibration and odour emissions, and its ability to add additional infrastructure on railway lands?

3. What are the assumptions that should be used to model the complete utilization of the capacity of the Stuart Street Rail Yard (the “Yard”) and CNs infrastructure in general in an ultimate configuration in assessing environmental impacts from the Yard?

### **Provincial Land Use Guidelines (Freight/D-Series)**

4. Does the proposed development meet the requirements of the Province of Ontario’s Freight Supportive Guidelines including policies 1.0, 1.1, 1.2, 1.2.1, 1.2.1.1, 1.3, 1.4, 1.4.1, 1.4.1.1, 1.4.1.2, 1.4.1.3, 1.4.2, 1.4.3, Figure 1.4, 1.4.3.2, 1.5, 1.5.1, 1.5.4, 2.0, 2.2, 2.2.1, 2.2.2, 2.2.3, 2.2.4 – Planning for Employment Areas, Figure 2.4, 2.2.5, 2.4, 2.4.1, 5.1, 5.1.1, 5.1.2, 5.1.2.1, 5.1.2.3, 5.2.4, and 5.2.5?
5. Do the proposed OPA and ZBA have regard to the D1 and D6 Guidelines of the Ministry of the Environment Conservation and Parks (“MECP”), including their applicability with provincial policy and the OP, and whether or not the yard is considered a Class III Industrial Facility?

### **FCM / RCM Guidelines**

6. Do the proposed OPA and ZBA have regard to the Federation of Canadian Municipalities and the Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations (“FCM/RAC Guidelines”)?

### **Noise & Vibration / NPC-300 / Federal Noise Guidelines**

7. Does the acoustic assessment appropriately assess the acoustic impact on the proposed development in accordance with NPC-300 and the RAC/FCM guidelines?
8. Do the proposed OPA and ZBA have regard to NPC-300 and its requirements, including acoustic assessment and feasibility under Class I and Class IV and in the context of the role of the Canadian Transportation Agency in addressing noise complaints?
9. Does the acoustical assessment take into consideration the frequency content/character of the noise sources and the following federal documents:
  - a. “Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration”, Canadian Transportation Agency, October, 2008; and
  - b. “Railway Noise Measurement and Reporting Methodology”, Canadian Transportation Agency, August 2011.

10. Is the use of enclosed noise buffers in any residential development on the Subject Lands to mitigate noise from the Yard appropriate, effective and capable of being implemented and maintained as required by NPC-300? If not, are other mitigation measures feasible to be implemented on the Subject Lands to meet the applicable guidelines?
11. Does the acoustic assessment appropriately assess the potential ground-borne vibration impact from both the transportation sources (rail) and the stationary sources (rail)?

### **Air Quality**

12. Has Air Quality been appropriately studied in conformance with MECP D-6 Series and related guidelines and statutes, to address potential fugitive emissions and compatibility with surrounding land uses, with particular focus on future locomotive use, adverse effects from diesel locomotives, assessment of receptors (doors, windows, outdoor amenity areas, and so on) and location of residential units?

### **Dangerous Goods/Hazards**

13. Should the location of residential units be considered with respect to the potential for hazardous accidental releases of materials including dangerous goods, solids, gases and fluids from rail cars within the railyard?

### **Appropriate Setback**

14. What is the appropriate setback distance for residential and other sensitive land uses from the Yard considering:
  - c. The D1 and D6 Guidelines;
  - d. The FCM-RAC Guidelines;
  - e. Environmental impacts from the Yard including rail noise, odour and air emissions, and the accidental release of substances from rail cars;
  - f. Federal Rail Noise and Vibration Guidelines, related to complaint investigations against the railway company;
  - g. Rail safety considerations including the consequences of a possible derailment;
  - h. complete utilization of the Yard's capacity in an ultimate configuration; and
  - i. current predictable worst-case assumptions.



**Mitigation / Implementation**

15. Do the provided site plans, reports and building envelopes proposed provide sufficient information to properly evaluate and minimize and mitigate any potential adverse effects (e.g., odour, noise, vibration, accidental release of substances from rail cars) on the development?
16. Are the proposed approval documents as adopted by Council appropriate to mitigate impacts from the Yard? Including the appropriateness of delegating all mitigation measures to Site Plan approval.
17. If the proposed development is approved, which planning tools will appropriately secure any required mitigation measures from recommendations of technical studies and other requirements be secured and enforced by the municipality on all or part of the lands (i.e.: OPA, ZBLA, site plan approval, condominium declarations, private agreements under NPC-300, environmental easements and agreements under the *Industrial Mining and Lands Compensation Act*, and etc.)?

**Good Planning**

18. Is residential development or other sensitive uses on the Subject Lands in the proposed OPA and ZBA compatible with the operation of the Yard and good planning?

**Issues List of the City of Hamilton**

1. What is the appropriate setback distance for residential and other sensitive land uses from the Yard considering setbacks implemented elsewhere in the north end communities of Hamilton including the Barton/Tiffany Neighbourhood?
2. What consideration should be given to the historical operations of the Yard in the historically established residential neighbourhoods in the north end of Hamilton?

**Attachment 3****Order of Evidence**

1. Canadian National Railway Company
2. Jamesville Redevelopment Limited Partnership (Applicant)
3. City of Hamilton
4. CityHousing Hamilton Corporation
5. Canadian National Railway Company (Reply)

**Attachment 4****Summary of Procedural Dates**

<b>Event</b>	<b>Date</b>
Witness List	January 22, 2024
Meeting of Experts	February 21, 2024
Agreed Statement of Facts/Opinions	March 12, 2024
Witness/Expert Witness/Participant Statements	March 22, 2024
Confirmation of Hearing Dates	April 16, 2024
Reply Witness/Expert Witness Statements	April 22, 2024
Visual Evidence	May 6, 2024
Joint Document Book	May 10, 2024
Preliminary Hearing Plan	May 14, 2024
Hearing	May 21, 2024 to May 31 2024 (9 days)