

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 08, 2024

CASE NO(S).:

OLT-24-000827

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

Applicant and Appellant:
Subject:

Medallion Development Inc.
Request to amend the Official Plan – Failure to adopt the requested amendment

Description:

To permit the development of four residential towers, commercial space, and parking.

Reference Number:

UHOPA-22-016

Property Address:

399 Greenhill Avenue

Municipality/UT:

Hamilton

OLT Case No.:

OLT-24-000827

OLT Lead Case No.:

OLT-24-000827

OLT Case Name:

Medallion Development 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:
Subject:

Medallion Development Inc.
Application to amend the Zoning By-law – Refusal or neglect to make a decision

Description:

To permit the development of four residential towers, commercial space, and parking.

Reference Number:

ZAC-22-030

Property Address:

399 Greenhill Avenue

Municipality/UT:

Hamilton

OLT Case No.:

OLT-24-000828

OLT Lead Case No.:

OLT-24-000827

OLT Case Name:

Medallion Development Inc. v. Hamilton (City)

Heard: October 23, 2024 by video hearing

APPEARANCES:

Parties

Medallion Development Inc.

City of Hamilton

Counsel

Brendan Ruddick
Quinto Annibale (*in absentia*)

Peter Krysiak

MEMORANDUM OF ORAL DECISION DELIVERED BY S. DIXON ON OCTOBER 23, 2024 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision and Order arises from the first case management conference (“CMC”) held regarding appeals filed by Medallion Development Inc. (“Appellant”) pursuant to ss. 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”), concerning official plan amendment and zoning by-law amendment applications (“Applications”) in the City of Hamilton (“City”) for lands known municipally as 399 Greenhill Avenue (“Subject Lands”).

[2] The Applications seek to facilitate the development of two 12-storey and two four-storey mixed-use buildings containing 553 purpose-built rental units and 975 square metres of commercial space on the Subject Lands.

[3] The Applications were supported by City planning staff but ultimately refused by City Council.

NOTICE

[4] The Tribunal was in receipt of an Affidavit of Service sworn by Roberta Green on September 20, 2024, which was marked as **Exhibit 1**. There were no concerns with the

service of notice for the CMC and as such, no further notice is required in these proceedings.

STATUS REQUESTS

[5] In advance of the CMC, the Tribunal received both a party status request and a participant status request from Fayne Downie. Ms. Downie is a board member with the Wentworth Condominium Corporation #76, which is comprised of 182 owners of residential units located at 30 and 40 Harrisford Street, to the immediate north of the Subject Lands.

[6] In consideration of her dual requests, the Tribunal outlined the roles and responsibilities of both a party and a participant and asked Ms. Downie to clarify which status she preferred to seek. She confirmed her preference for participant status, which raised no objections from the Parties. Accordingly, the request was granted by the Tribunal and Ms. Downie was conferred participant status to these proceedings.

[7] In support of her request for participant status, Ms. Downie submitted a letter to the Tribunal, dated October 4, 2024, that provides a detailed explanation of her objections to the Appellant's development proposal. In it, Ms. Downie notes that she – and by extension the condominium corporation – is not opposed to the redevelopment of the Subject Lands, but believes it can and should be done in a manner that is more compatible with the existing neighbourhood context and that does not result in a reduction of the existing commercial space on the Subject Lands, which are, in her opinion, well utilised by the existing community.

[8] Ms. Downie clarified that she wished to adopt her letter as her official Participant Statement and did not intend to submit anything further to the Tribunal. It is the Tribunal's expectation that the Parties will address the concerns outlined in her letter in their future submissions to the Tribunal.

OPPORTUNITIES FOR SETTLEMENT

[9] The Parties advised the Tribunal that they are open to mediation and have met to discuss same. However, the Tribunal gathered from their submissions that a settlement may not be achievable in this instance and a hearing on the merits is likely required. Nonetheless, the Parties are aware of the services that the Tribunal offers in this regard and will contact the Tribunal's case coordinator should they determine that assisted mediation may be useful.

DRAFT PROCEDURAL ORDER AND ISSUES LIST

[10] In preparation for a contested hearing, the Parties submitted a draft procedural order ("DPO") and issues list ("IL") to the Tribunal but noted that additional time was needed to review and finalise both for the Tribunal's consideration.

[11] Accordingly, the Tribunal directed that a revised DPO and IL be provided to the Tribunal by no later than Wednesday, November 6, 2024. Having since received and reviewed the updated DPO and IL from the Parties, the Tribunal hereby approves the procedural order and issues list attached to this Decision and Order as **Schedule 1**.

HEARING DATES

[12] The Parties requested that seven days be set aside for a hearing on the merits of the appeals, noting the number and types of witnesses that will likely be called upon to provide evidence.

[13] The Tribunal found this to be a reasonable request and scheduled a video hearing commencing **Monday, March 24, 2025** at **10 a.m.** Seven consecutive business days have been set aside for the hearing.

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

GoTo Meeting: <https://global.gotomeeting.com/join/909787981>

Access Code: 909-787-981

[15] Parties 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>.

[16] 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: **+1 647-497-9391** or **(Toll Free) 1-888-455-1389**. **The Access Code is as indicated above.**

[17] 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 video hearing 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

[18] **THE TRIBUNAL ORDERS** that Fayne Downie is conferred Participant Status and is henceforth a Participant to these proceedings.

[19] **THE TRIBUNAL ORDERS** that the Procedural Order attached hereto as Schedule 1 is approved and shall govern the remainder of these proceedings.

"S. Dixon"

S. DIXON
MEMBER

Ontario Land Tribunal

Website: 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.

SCHEDULE 1

PROCEDURAL ORDER

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

Applicant and Appellant:	Medallion Development Inc.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	To permit development of four residential towers, commercial space, and parking
Reference Number:	UHOPA-22-016
Property Address:	399 Greenhill Avenue
Municipality/UT:	Hamilton
OLT Case No.:	OLT-24-000827
OLT Lead Case No.:	OLT-24-000827
OLT Case Name:	Medallion Development 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:	Medallion Development Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit development of four residential towers, commercial space, and parking
Reference Number:	ZAC-22-030
Property Address:	399 Greenhill Avenue
Municipality/UT:	Hamilton
OLT Case No.:	OLT-24-000828
OLT Lead Case No.:	OLT-24-000827
OLT Case Name:	Medallion Development Inc. v. Hamilton (City)

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 **March 24, 2024** at 10 a.m. at:

<https://global.gotomeeting.com/join/909787981>

3. The parties' initial estimation for the length of the hearing is **seven** 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**. When finalized 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 applicable procedural dates 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 **December 13, 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 **January 10, 2025** 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 **January 16, 2025**.
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 13 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 **January 30, 2025**, the parties shall provide copies of their 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 **January 30, 2025**, 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. On or before **February 17, 2025** the parties shall confirm with the Tribunal if all the reserved hearing dates are still required.
17. On or before **March 10, 2025**, 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.
18. Parties may provide to all other parties and the OLT case co-ordinator a written response to any written evidence on or before **February 20, 2025** and in accordance with paragraph 23 below.

19. The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case co-ordinator on or before **March 17, 2025**.
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 **March 17, 2025** 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 the *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 1
LIST OF PARTIES AND PARTICIPANTS**

Parties	Counsel
Medallion Development Inc.	Loopstra Nixon LLP 100 New Park Place Suite 303, Vaughan, Ontario L4K 0H9 Quinto Annibale Email: gannibale@loonix.com Tel: 416.748.4757 Brendan Ruddick Email: bruddick@ln.law Tel: 416.748.5126
City of Hamilton	City of Hamilton Legal Services 50 Main Street East 5 th Floor Hamilton, Ontario L8N 1E9 Peter Krysiak Email: Peter.Krysiak@hamilton.ca Tel: 905.546.2424 ext. 2273
Participants	Representative
Fayne Downie	30 & 40 Harrisford Ave Hamilton, Ontario L4K 0H9 Fayne Downie Email: fayned@rogers.com Tel: 905-518-9800

ATTACHMENT 2 ISSUES LIST

Note: The identification and wording of an issue on the Issues List does not constitute an acknowledgement by the Tribunal or any party that the issue is expressed, accurately-worded, relevant, or appropriate to the determination of the Tribunal at the hearing. The identification of an issue by a party indicates that party's framing of the question and intent to tender evidence and/or make submissions on it, for the purpose of fairly identifying to the other parties the case they need to meet. 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.

Issues of City of Hamilton

1. Does the Proposed Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") have appropriate regard to matters of provincial interest as required by section 2 of the *Planning Act* including 2(h), 2(j), 2(n), 2(p) and 2(r)?
2. Subject to any transition regulations that may be in effect, are the OPA and ZBA consistent with the Provincial Planning Statement, 2024, including without limitation policies: 2.1.6, 2.3.1.2 and 2.3.1.3?
3. Subject to any transition regulations that may be in effect, are the OPA and ZBA consistent with the Provincial Policy Statement, 2020, including without limitation policies: 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.3 and 1.1.3.4?
4. Subject to any transition regulations that may be in effect, does the OPA conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended, including without limitation sections: 1.2.1 and 2.2.2(3)?
5. Does the proposed development conform with the Residential Intensification policies of Section B.2.4 of the Urban Hamilton Official Plan including, but not limited to B.2.4.1.4, B.2.4.2.1 and B.2.4.2.2?
6. Does the proposed development conform with Urban Design policies in Section B.3.3 of the Urban Hamilton Official Plan including, but not limited to B.3.3.1, B.3.3.2.3, B.3.3.2.4, B.3.3.2.6, B.3.3.3, B.3.3.3.1, B.3.3.3.2, B.3.3.3.3 and B.3.3.3.5?

7. Does the proposed development conform with Neighbourhoods Element policies in Section E.2.7 of the Urban Hamilton Official Plan including, but not limited to E.2.7.7?
8. Does the proposed development conform with the goals of the Neighbourhoods Designation in Section E.3.1 of the Urban Hamilton Official Plan?
9. Does the proposed development conform with the Neighbourhoods Designation policies in Section E.3.2 of the Urban Hamilton Official Plan dealing with Scale and Design including, but not limited to E.3.2.4, E.3.2.7, E.3.2.13?
10. Does the proposed development conform with the Residential Uses - General Policies (Neighbourhood land use designation) of Section E.3.3 of the Urban Hamilton Official Plan including, but not limited to E.3.3.2?
11. Does the proposed development conform with the functional and locational requirements of Section E.3.5, Medium Density Residential, of the Urban Hamilton Official Plan including, but not limited to E.3.5.1, E.3.5.4, E.3.5.5 and E.3.5.6?
12. Are the proposed height of 12 storeys, density of 395 units per hectare and site design appropriate for the site given the physical context of the surrounding area and the policy requirements of Section E.3.5, Medium Density Residential, of the Urban Hamilton Official Plan including, but not limited to E.3.5.7 and E.3.5.8?
13. Is it appropriate to exempt the proposed development from the Local Commercial requirements of E.3.8.9 a) and E.3.8.14 b) of the Urban Hamilton Official Plan?
14. Does the commercial component of the proposed development conform with the policies of Section E.3.8 of the Urban Hamilton Official Plan including, but not limited to E.3.8.1, E.3.8.5, E.3.8.10 and E.3.8.14?
15. Does the proposed development maintain or enhance the character of the area or neighbourhood?
16. Is the proposed development compatible with the surrounding area?
17. Does the proposed development ensure an appropriate transition to the surrounding neighbourhood land uses?
18. Does the proposed development result in any adverse impacts?

19. Does the ZBA sufficiently regulate matters of built form including height, density, massing, scale, setbacks, stepbacks, lot coverage and landscaping having regard for the site, adjacent property, and the character of the surrounding lands?
20. Is a holding provision appropriate for the proposed development, and if so, what are the appropriate provisions to include?
21. Does the ZBA constitute good land use planning and is it in the public interest?

**ATTACHMENT 3
ORDER OF EVIDENCE**

1. Medallion Development Inc.
2. City of Hamilton
3. Reply by Medallion Development Inc.

**ATTACHMENT 4
SUMMARY OF DATES**

Date	Event
December 13, 2024	Deadline for Witness List Exchange
January 10, 2025	Deadline for Expert Witness Meeting
January 16, 2025	Deadline for Statement of Agreed Facts
January 30, 2025	Deadline for Witness Statements, Expert Witness Statements and Participant Statements Exchange
February 17, 2025	Deadline for advising the Tribunal if all the reserved hearing dates are required
March 10, 2025	Deadline for Visual Evidence Exchange
February 20, 2025	Deadline for Reply Witness Statements (if any)
March 17, 2025	Deadline for Joint Document Book submission
March 17, 2025	Deadline for Hearing Plan
March 24, 2025	Commencement of Hearing

ATTACHMENT 5 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.