

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: March 08, 2021

CASE NO(S): DC190025

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

Appellant:	Amacon Development (City Centre) Corp.
Appellant:	Collegeway Mississauga Holdings Ltd.
Subject:	Development Charges By-law No. 0096-2019
Municipality:	City of Mississauga
LPAT Case No.:	DC190025
LPAT File No.:	DC190025
LPAT Case Name:	Amacon Development Corp. v. Mississauga (City)

Heard: February 8, 2021, by video hearing

APPEARANCES:

Parties

Counsel

Amacon Development (City Centre) Corp.	Alex Lusty
--	------------

Collegeway Mississauga Holdings Ltd.	Bruce Engell
--------------------------------------	--------------

City of Mississauga	Lia Magi
---------------------	----------

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
FEBRUARY 8, 2021 AND ORDER OF THE TRIBUNAL**

[1] Amacon Development (City Centre) Corp. and Collegeway Mississauga Holdings Ltd. each appealed the passage by the City of Mississauga (“City”) of Development Charges By-law No. 0096-2019, which imposes development charges on the development of all lands within the geographic boundaries of the City.

[2] The first Case Management Conference (“CMC”) for this proceeding was held on August 26, 2020 at which the Tribunal set aside 15 days for the hearing of the appeals. The hearing will commence on May 3, 2021.

[3] The Tribunal held a second CMC on February 8, 2021. Prior to that CMC, the Tribunal received a draft Procedural Order and Issues List, which were filed on consent. The Tribunal has reviewed these documents and approves them.

[4] At the second CMC, the Parties updated the Tribunal on settlement discussions and stated that they would contact the Tribunal if the need for Tribunal-assisted mediation arises.

ORDER

[5] The Tribunal approves the draft Procedural Order and Issues List attached as Schedule 1 to this Order and Decision.

[6] This Member is not seized.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



CASE NO(S): DC190025

SCHEDULE 1

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER Section 14 of the *Development Charges Act, 1997, S.O. 1997, c. 27*

Appellant:	Amacon Development (City Centre) Corp.
Appellant:	Collegeway Mississauga Holdings Ltd.
Subject:	Development Charges By-law 0096-2019
Municipality:	City of Mississauga
L.P.A.T. Case Number:	DC190025
L.P.A.T. File Number:	DC190025

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 hearing will begin on **May 3, 2021 at 10:00 a.m. by videoconference**. Details for participating in the hearing are set out in the Tribunal’s decision issued September 4, 2020. A further case management conference or telephone conference event will be scheduled if a party or the Tribunal wishes to convert the hearing to an in-person event.
3. The hearing is scheduled for **15 days**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties 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**. Except for scoping or removing issues, there will be no changes to this list unless the Tribunal permits it. 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. 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/tribunals/lpat/>).

Requirements Before the Hearing

8. 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 **March 2, 2021** and in accordance with paragraph 20 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 proposed to be qualified. Any challenges to the qualification of a witness to give opinion evidence in the area of expertise proposed should be made by a motion in accordance with the Tribunal's Rules and notice of the same must be served on the other Parties on or before **March 12, 2021**.
9. Unless the parties agree otherwise, expert witnesses in the same field shall have a meeting on or before **April 6, 2021**, employing best efforts to resolve or reduce the issues for the hearing. The experts must subsequently prepare and file a Statement of Agreed Facts and Issues with the parties and the LPAT case co-ordinator on or before **April 14, 2021**.
10. An expert witness shall prepare an expert witness statement that shall include: an Acknowledgment of Expert's Duty form, a list of 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 paragraph 12 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.
11. 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 12 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 12 below.
12. On or before **March 26, 2021**, the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the LPAT case co-ordinator.
13. On or before **April 19, 2021**, the parties shall provide copies of reply witness statements, if any, to all other parties and the LPAT case co-ordinator.

14. On or before **April 19, 2021**, the parties shall provide copies of their visual evidence, if any, to all of the other parties.
15. The parties shall cooperate to prepare a joint document book which shall be shared with the LPAT case co-ordinator on or before **April 23, 2021**.
16. 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 LPAT case co-ordinator, on or before **April 28, 2021**.
17. 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.*
18. 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.
19. The parties shall prepare and file a [hearing plan](#) with the Tribunal on or before **April 23, 2021** 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.
20. All filing shall be electronic copy only, 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 email shall be governed by the Rule 7.
21. 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.
22. A summary of the various procedural dates is contained in **Attachment 4**.

This Member is not seized.

So orders the Tribunal.

ATTACHMENT 1

LIST OF PARTIES AND PARTICIPANTS

PARTIES: **THE CORPORATION OF THE CITY OF MISSISSAUGA**
300 City Centre Drive, 4th Floor
Mississauga, ON L5B 3C1

Lia Magi, Legal Counsel
E: Lia.Magi@mississauga.ca
T: 905-615-3200 ext. 3086

AMACON DEVELOPMENT (CITY CENTRE) CORP.

Davies Howe LLP
Tenth Floor, 425 Adelaide Street West
Toronto, ON M5V 3C1

Susan Rosenthal
E: susanr@davieshowe.com
T: 416-263-4518

Alex Lusty
E: alexl@davieshowe.com
T: 416.263.4522

COLLEGEWAY MISSISSAUGA HOLDINGS LIMITED

WeirFoulds LLP
Suite 10, 1525 Cornwall Road
Oakville, ON L6J OB2

Denise Baker
E: dbaker@weirfoulds.com
T: 416-947-5090

PARTICIPANTS: None

ATTACHMENT 2

ISSUES LIST

NOTE: The identification of an issue on the Issues List does not constitute an acknowledgement by the Tribunal or any party that the issue is either relevant or appropriate. The identification of an issue on this list indicates a party's intent to lead evidence or argue that the issue is relevant to the proceeding, for the purpose of fairly identifying to the other parties the case they need to meet. Accordingly, no party shall advance an issue not identified on the Issues List without leave of the Tribunal.

AMACON DEVELOPMENT (CITY CENTRE) CORP.:

1. Have the development charges imposed by By-law 0096-2019 (the "By-law") been calculated using a methodology that is reasonable, fair and in compliance with the requirements of the *Development Charges Act, 1997* (the "DCA") and Regulations, including with respect to:
 - (a) funding increased capital costs required because of increased needs for service arising from development;
 - (b) not funding increased services that would result in the level of service exceeding the average level of service provided in the municipality over the 10-year period immediately preceding the preparation of the subject background study;
 - (c) appropriately accounting for excess capacity in the municipality's infrastructure;
 - (d) appropriately accounting for post-period benefits; and,
 - (e) appropriately accounting for benefits to existing development.
2. Should the City Centre, Port Credit Parking Structures and related studies be funded through the City's development charges, and if so, to what extent? Is the share of the costs for the City Centre Parking Structure and "Feasibility Study – Port Credit Study" allocated to the residential sector reasonable? If not, what is the reasonable share, if any, to allocate to the residential sector?
3. For Parking Services, has Council indicated an intent to commit excess capacity in compliance with the *DCA* and Regulations?
4. Has the charge attributable to New Roads projects been calculated using a methodology that is fair and reasonable and in compliance with the *DCA* and Regulations, including with respect to the appropriate allocation of in period growth and benefit-to-existing?
5. Has the development charge imposed for Rail Grade Separation projects been calculated using a methodology that is fair and reasonable and in compliance with the *DCA* and Regulations, including with respect to the appropriate allocations for benefit-to-existing, in period growth and post-period benefits?
6. Have the costs attributable to Cycling, Bicycling and Pedestrian infrastructure been calculated using a methodology that is fair and reasonable and in compliance with the *DCA* and Regulations,

including with respect to appropriate allocation to in-period growth, benefit-to-existing and post-period benefit?

7. Has the Transit Services charge been calculated using a methodology that is fair and reasonable and in compliance with the *DCA* and Regulations, including with respect to the appropriate allocation to in-period growth, benefit-to-existing and post-period benefit for Buses, Transit Meadowvale Satellite – Design, Bus Pads, Bus Landing, Churchill Meadows Community Centre Bus Turnaround and Facility Electrification Study?
8. Is the development charge for Transit Services overestimated as a result of not appropriately including the reserve fund balance?
9. Is the allocation of one hundred percent of eligible recreation services, library services and Living Arts Centre debt costs to the residential sector fair and reasonable and in compliance with the *DCA* and Regulations?
10. Have exigible development charges been overestimated as a result of the application of the cash flow method?
11. What are the appropriate development charges to be imposed by the By-law, implementing those adjustments that are appropriate, if any, to reflect the Tribunal’s decision on the above issues?

COLLEGEWAY MISSISSAUGA HOLDINGS LIMITED:

1. Are the development charges imposed by the DC By-law reasonable, fair and in compliance with the requirements of the Development Charges Act, 1997 and associated Regulations?
2. Are the persons per unit (“**PPU**”) assumed for new apartment units over the 10 year horizon 2019-2028 in the City of Mississauga DC Background Study appropriate?
3. Is the approach to the PPU for new apartments in the City’s 2019 DC Background Study prepared by Hemson Consulting appropriate?
4. Is the percentage increase in the DC By-law for apartments as between the 2014 DC Bylaw and the 2019 DC Bylaw appropriate, particularly as compared to other unit types?
5. In the event the Tribunal finds favour with CMHL in the above issues, what are the appropriate development charges to be imposed by the By-law?

ATTACHMENT 3

ORDER OF EVIDENCE

1. **In Chief:** The Corporation of the City of Mississauga

2. **In Response:** Amacon Development (City Centre) Corp.
Collegeway Mississauga Holdings Limited

3. **In Reply:** The Corporation of the City of Mississauga

ATTACHMENT 4

Summary of Procedural Dates

EVENT	DATE
Parties to exchange their List of Witnesses	March 2, 2021
Last date to challenge qualification of expert witnesses	March 12, 2021
Parties to exchange their Witness and Expert Witness Statements	March 26, 2021
File Statement of Agreed Facts	April 14, 2021
Parties to exchange their Reply Witness Statements	April 19, 2021
Parties to exchange their Visual Evidence	April 19, 2021
Parties to file Hearing Plan	April 23, 2021
Parties to file Joint Document Book with Tribunal	April 23, 2021
Last Day for Party to Notify Other Parties if Submitted Written Evidence not Forming Part of Record	April 26, 2021
Cross-Examination Documents (Password Protected)	April 28, 2021
LPAT hearing commences	May 3, 2021

ATTACHMENT 5

Meaning of terms used in the Procedural Order

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 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, group 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). Subsection 33.2 of the *Local Planning Appeal 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 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 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 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 wishes to address and the submission of

the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.

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.*