

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



ISSUE DATE: February 15, 2019

CASE NO(S): PL171205

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

Applicant and Appellant:	4005 Hickory Drive Limited
Subject:	Application to amend Zoning By-law No. 0225-2007 - Neglect of the City of Mississauga to make a decision
Existing Zoning:	O Zone (Office)
Proposed Zoning:	RM9-XX with site specific exemptions
Property Address/Description:	4005 Hickory Drive
Municipality:	City of Mississauga
Municipal File No.:	OZ 17/006
OMB Case No.:	PL171205
OMB File No.:	PL171205
OMB Case Name:	4005 Hickory Drive Limited v. Mississauga (City)

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

Applicant and Appellant:	4005 Hickory Drive Limited
Subject:	Request to amend the Official Plan - Failure of the City of Mississauga to adopt the requested amendment
Existing Designation:	Office and accessory uses
Proposed Designation:	Residential Medium Density
Property Address/Description:	4005 Hickory Drive
Municipality:	City of Mississauga
Approval Authority File No.:	OPA 17/006
OMB Case No.:	PL171205
OMB File No.:	PL171300

Heard: January 25, 2019 by telephone conference call

APPEARANCES:

Parties

Counsel

4005 Hickory Drive Limited

Max Laskin and David Bronskill (in absentia)

City of Mississauga

Marc Kemerer

Nina Rubino

Barry Horosko

DECISION DELIVERED BY ANNE MILCHBERG AND ORDER OF THE TRIBUNAL

[1] This was the second Pre-Hearing Conference (“PHC”) on appeals under s. 22(7) and s. 34(11) of the *Planning Act* (“Act”) by 4005 Hickory Drive Limited (“Applicant” and “Appellant”).

[2] At the start of the PHC, I disclosed to Barry Horosko, counsel for Nina Rubino, that I am related to the wife of Mr. Laskin, who represented the Applicant at this pre-hearing event. Mr. Horosko submitted that he did not have an issue with my pre-hearing involvement on procedural matters of consent. At the first PHC on November 28, 2018, I had provided the same disclosure to the City, which advised me that it also had no issue with my involvement on procedural matters of consent.

[3] A draft Procedural Order was submitted to the Tribunal by the Parties in advance of this PHC. With the addition of one new clause by the Parties, as directed by the Tribunal, the Procedural Order is now complete and ready to issue.

[4] The Procedural Order forms Appendix 1 to this decision. It contains: issues lists; lists of Parties and Participants; witness lists; the order of evidence; the timing of submission and exchange of expert witness statements; and the timing of submission and exchange of Participant statements.

[5] The hearing of this matter will be seven days in length, and will be held on **April 6-9 and April 14-16, 2020** commencing at **10 a.m.**, in:

**Municipal Hearing Room
Mississauga City Hall
300 City Centre Drive
Mississauga, ON L5B 3C1**

[6] The length of the hearing may be shortened as issues are resolved or settlement is achieved.

[7] I am not seized, and, should Mr. Laskin be involved in the contested hearing event, I will ensure that I do not hear the matter.

“Anne Milchberg”

ANNE MILCHBERG
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

LOCAL PLANNING APPEAL TRIBUNAL

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

Applicant and Appellant: 4005 Hickory Drive Limited
Subject: Application to amend Zoning By-law No. 0225-2007 – Neglect of the City of Mississauga to make a decision O Zone (Office)
Existing Zoning: O Zone (Office)
Proposed Zoning: RM9-XX with site specific exemptions
Purpose: To permit 102 horizontal multiple dwelling development
Property Address/Description: 4005 Hickory Drive
Municipality: City of Mississauga
Municipality File No.: OZ 17/006
OMB Case No.: PL171205
OMB File No.: PL171205

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

Applicant and Appellant: 4005 Hickory Drive Limited
Subject: Request to amend the Official Plan – Failure of the City of Mississauga to adopt the requested amendment
Existing Designation: Office and accessory uses
Proposed Designation: Residential Medium Density
Purpose: To permit 102 horizontal multiple dwelling development
Property Address/Description: 4005 Hickory Drive
Municipality: City of Mississauga
Municipality File No.: OZ 17/006
OMB Case No.: PL171205
OMB File No.: PL171300

PROCEDURAL ORDER

1. The Tribunal may vary or add to these rules at any time, either on request of a party or as it sees fit. It may alter this Order by an oral ruling or by written Order.

Organization of the Hearing

2. The hearing will be held on **April 6 to April 9** and **April 14 to April 16, 2020** at 10:00 a.m. at Mississauga City Hall (Municipal Hearing Room, 300 City Centre Drive, Mississauga, ON L5B 3C1).
3. The length of the hearing will be 7 days. The length of the hearing may be shortened as issues are resolved or settlement is achieved. The parties and participants identified at the prehearing conference are listed in Attachment 1 to this Order. The order of evidence is set out in Attachment 2.
4. The issues are set out in the Issues List attached as Attachment 3. There will be no changes to this list unless the Tribunal permits. A party who asks for changes may have costs awarded against it, except if the Issues List is modified through mediation or pursuant to a settlement between any of the parties.

Requirements Before the Hearing

5. All parties and participants (or their representatives) shall provide an email address and telephone number to the Tribunal. Any such person who retains a representative (legal counsel or agent) must advise the other parties and the Tribunal of the representative's name, email address and phone number.
6. 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 7, 2020**. For expert witnesses, a party is to include the area of expertise in which the witness is proposed to be qualified.
7. Expert witnesses in the same field shall have a meeting on or before **January 15, 2020** to try to resolve or narrow the issues for the hearing. Following the meeting, experts must jointly prepare a list of agreed facts and a list of the remaining issues to be addressed, and provide these lists to the parties and the Tribunal on or before **January 27, 2020**.
8. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of the expert witness statement must be provided to the other parties on or before **February 3, 2020**. 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.
9. A participant or lay witness must provide to the Tribunal and to the parties a participant statement or witness statement, as the case may be, on or before **February 3, 2020** or the participant / lay witness may not give oral evidence at the hearing.

10. 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 this expert's evidence and his or her area of expertise on or before **February 3, 2020**.
11. On or before **March 9, 2020**, the parties shall provide copies of their visual evidence upon which they will rely on to all of the other parties. If a model is to be used the Tribunal must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
12. On or before **March 9, 2020**, the parties may provide to the other parties a written reply to any expert witness statement (or expert report).
13. A party wishing to change written evidence, including witness statements, must make a motion to the Tribunal (see Rule 10 of the Tribunal's Rules).
14. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Tribunal and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.
15. Documents may be delivered by personal delivery, email, courier, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules 7.10 to 7.13 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
16. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rules 17.01 to 17.05 apply to such requests.

This Member is not seized.

So orders the Tribunal.

SUMMARY OF DATES

DATE	EVENT
January 7, 2020	Witness lists (including names, disciplines and order to be called) to be exchanged
January 15, 2020	Expert meetings to be held
January 27, 2020	List of agreed facts and remaining issues to be addressed to be exchanged
February 3, 2020	Witness Statements, Expert Reports, Outlines for Witnesses under Summons and Participant Statements to be exchanged
March 9, 2020	Reply Witness Statements (if any) to be exchanged
March 9, 2020	Parties to exchange copies of visual evidence
April 6, 2020	Hearing commences

ATTACHMENT 1 – LIST OF PARTIES/PARTICIPANTS

PARTIES

4005 Hickory Drive Limited

City of Mississauga

Nina Rubino

PARTICIPANTS

Giovina Petruccelli

Pileria Reda

ATTACHMENT 2 – ORDER OF EVIDENCE

1. 4005 Hickory Drive Limited
2. City of Mississauga
3. Nina Rubino
4. Participants
5. 4005 Hickory Drive Limited (Reply, if any)

ATTACHMENT 3 – ISSUES LIST

NOTE: 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.

City of Mississauga

Policy Context

1. Does the proposed development of the Subject Lands for 102 horizontal multiple dwellings:
 - a. have regard for matters of Provincial interest, as outlined in Section 2 of the Planning Act and, in particular, subsections (i), (k), (m), (p), (q) and (r);
 - b. demonstrate consistency with the Provincial Policy Statement 2014, including but not limited to, Policies 1.1.3.2 a); 1.1.3.3, 1.1.3.4, 1.1.3.6; 1.3.1; 1.4.3, 1.7.1 c); 1.7.1 d); 4.7 and 4.8;
 - c. conform to the Growth Plan for the Greater Golden Horseshoe, 2017 including, but not limited to, Policies 1.2.1, 2.1, 2.2.1, 2.2.1.4, 2.2.2, 2.2.2.4 and 2.2.5; 2.2.6;
 - d. conform to the Region of Peel Official Plan (December 2016 Consolidation), including, but not limited to, Policies 5.3, 5.3.1.4, 5.3.1.5, 5.3.1.7, 5.3.2.6, 5.5 and 5.5.3.2.9;
 - e. conform to the Mississauga Official Plan (August 2017 Consolidation) including, but not limited to, Policies 1.1.4 c.; 1.1.4 r.; 1.1.4 aa).; 4.5; 7.1.2; 7.1.3; 8.4.1; 8.4.3; 8.4.7; 9.1; 9.1.2; 9.1.5; 9.1.8; 9.1.10; 9.1.14; 9.1.15; 9.2.1; 9.2.1.4; 9.2.1.7; 9.2.1.9; 9.2.1.10; 9.2.1.17; 9.2.1.19; 9.2.1.21; 9.2.1.22; 9.2.1.23; 9.2.1.24; 9.2.1.25; 9.2.1.27; 9.2.1.28; 9.2.1.29; 9.2.1.31; 9.2.1.32; 9.3.1.8; 9.3.3.1; 9.4.1.3; 9.5.1.1; 9.5.1.2; 9.5.1.5; 9.5.1.11; 9.5.1.12; 9.5.1.13; 9.5.2.1; 9.5.2.2; 9.5.2.3; 9.5.2.4; 9.5.2.5; 9.5.2.7; 9.5.2.11; 9.5.3.2; 9.5.3.5; 9.5.3.7; 9.5.3.8; 9.5.3.18; 9.5.4.1; 9.5.4.4; 10.; 10.1.5; 10.2; 10.2.3; 10.2.4; 11.2.7; 14.8; 16.21; 16.21.1; 16.21.2.2; 16.21.2.2.2; 19.4; 19.4.3; 19.4.5; .
2. Would the proposed development appropriately implement the:
 - a. Transit Supportive Guidelines of the Province of Ontario, 2012;
 - b. Waste Collection Design Standards of the Region of Peel; and
 - c. Relevant Urban Design Guidelines of the City of Mississauga, including Design Guidelines for Low Rise Multiple Dwellings.

3. Are the Subject Lands an appropriate location for sole purpose residential intensification? Is the proposed density and land use appropriate?
4. Is the conversion from the existing "Office" designation appropriate and does it represent good planning?

Standards/Impact

5. Does the proposed development provide for an appropriate transition to low density and other surrounding land uses given the current planning context and the future planning direction for the surrounding neighbourhood and community core?
6. Are the proposed performance standards for the development, including, but not limited to, building height, form, massing and setbacks; frontage; lot size; building separations; minimum landscaped open space and buffers, appropriate, including the adequacy of indoor and outdoor amenity space? Do those standards ensure compatibility with low-density residential and other surrounding land uses?
7. Does the proposed development create unacceptable impacts on the surrounding homes including loss of privacy and unacceptable overlook?
8. Does the proposed development adversely impact the form, function and development of remaining developable lands on both Burnhamthorpe Road East, Hickory Drive and the surrounding environs?

Prematurity

9. In the absence of a comprehensive concept plan for the community core and surrounding lands is the proposal premature?

Servicing

10. Is the internal roadway proposed for the development adequate for vehicle movement including adequate and appropriate provision for service delivery and large vehicle movement (ie. Fire, emergency services, garbage pickup and delivery vehicles)?

Section 37 Benefit

11. If the proposed development is approved should the Tribunal require the provision of facilities, services or matters pursuant to Section 37 of the *Planning Act*? If so what should that community benefit be and what is the appropriate level for that benefit?

Nina Rubino

General

Provincial Statutory & Policy Requirements

1. Is the proposed development consistent with the Provincial Policy Statement (PPS) 2014 and in particular with the following policies:
 - a. Section 1.1.3.2 a) Land use patterns within settlement areas shall be based on densities and a mix of land uses
 - b. Section 1.1.3.6 New development shall have a compact form, mix of uses and densities that allow for the efficient use of land, infrastructure and public service facilities.
 - c. Section 1.3.1 Employment – Providing for an appropriate mix and range of employment uses, maintaining a range and choice of suitable sites for employment uses
 - d. Section 1.7 Long Term Economic Prosperity – Optimizing the long-term availability and use of land, and enhancing the vitality and viability of mainstreets
2. Does the proposed development conform with the Growth Plan for the Greater Golden Horseshoe (2017) and in particular with the following policies:
 - a. Section 1.2.1 Guiding Principles – Support the achievement of complete communities, provide flexibility to capitalize on new economic and employment opportunities.
 - b. Section 2.2 Policies for Where and How to Grow; 2.2.1.4., 2.2.2.5, 2.2.5.1, 2.2.5.3

Region of Peel Official Plan

3. Does the proposed development conform to the Region of Peel Official Plan (December 2016 Office Consolidation) and in particular the following policies:
 - a. Section 5.3 The Urban System – In particular 5.3.1.3, 5.3.1.4, achieving complete communities with a mix of land uses
 - b. Section 5.3.2.6 Provide transit supportive opportunities for redevelopment, intensification and mixed land use.
 - c. Section 5.5.3.2.9 Area municipality identifies in its Official Plan appropriate type and scale of development in an intensification area.

City of Mississauga Official Plan

4. Is it appropriate that the site should be re-designated from Office to Medium Density Residential?
5. Does it conform with the vision of the area contemplated by the Rathwood-Applewood Community Node Plan contained in Section 14.8?
6. Does the proposed development conform with the following policies of the City of Mississauga Official Plan:
 - a. Section 1.1.1 Mississauga Strategic Plan requirement to meet employment needs
 - b. Section 1.1.4.c Requirement for a Municipal Comprehensive review for consideration of conversion of employment lands
 - c. Section 1.1.4.r Compatibility of the proposed development to existing development without creating unacceptable adverse impacts
 - d. Section 4.5 Achieving balanced population and employment growth; and promoting new office development in strategic locations
 - e. Section 7.1.3.a Encouraging compact mixed use development
 - f. Section 8.2.2.3 Creation of a fine grained road pattern
 - g. Section 8.2.2.4 Creation of a finer grain road pattern in intensification areas
 - h. Section 8.2.2.5 Create a denser road pattern through the creation of new roads
 - i. Section 8.2.2.7 New roads should be public roads but public easements may be required where private roads are permitted.
 - j. Section 8.4.1 Off-street parking provided in conjunction with new development should provide safe and efficient access from the road network
 - k. Section 8.4.7 c.,d.,f.,g. Within intensification areas consideration will be given to limiting surface parking
 - l. Section 9.1 Build a desirable Built Form
 - m. Section 9.1.2 Within intensification areas promote a diverse mix of uses
 - n. Section 9.1.3 Infill and development within neighbourhoods will respect the existing and planned character

- o. Section 9.1.5 Development on Corridors will be consistent with existing or planned character, seek opportunities to enhance the Corridor and provide appropriate transitions to neighbouring uses
- p. Section 9.1.10 a.,b.,c.,d.,e The City Vision will be supported by development that respects certain principles.
- q. Section 9.1.14 Mississauga may undertake or require studies to develop more specific urban form requirements
- r. Section 9.2.1 Appropriate development in Intensification areas
- s. Section 9.2.1.4 Reduce impact of parking areas, enhance pedestrian circulation, complement adjacent uses
- t. Section 9.2.1.5 Small land parcels should be assembled to create efficient development parcels
- u. Section 9.2.1.6 Encourage the consolidation of access points and shared parking, service areas and driveway entrances
- v. Section 9.2.1.7 Development proponents may be required to show how a site will be developed with surrounding lands.
- w. Section 9.2.1.10 Appropriate height and built form transitions between sites and surrounding areas
- x. Section 9.2.1.18 Large blocks should be reconfigured to incorporate a fine grain block structure
- y. Section 9.2.1.24 Development will face the street
- z. Section 9.2.1.29 Development will have a compatible bulk, massing and scale of built form to provide an integrated streetscape
- aa. Section 9.2.1.31 Buildings should be positioned along the edge of public streets and public open spaces
- bb. Section 9.2.1.32 Buildings should be oriented to, and positioned along the street edge
- cc. Section 9.3.1.5 a.,b Improvement of existing streets and design of new streets to develop a fine grained system of roads and using short streets and small blocks to encourage pedestrian movement
- dd. Section 9.5.1.1 Buildings and site design will be compatible with surrounding context and landscape of the existing or planned character of the area.

- ee. Section 9.5.1.2 d.,e.,f.,g.,h.,i.,k.,l.,m. Development should be compatible and provide appropriate transition to existing and planned development by having regard to various elements
- ff. Section 9.5.1.9 Development proposals will demonstrate compatibility and integration with surrounding land uses
- gg. Section 9.5.1.12 Noise will be mitigated through appropriate built form and site design.
- hh. Section 9.5.2.1 High quality, diverse and innovative design will be promoted in a form that reinforces and enhances the local character, respects its immediate context and creates a quality living or working environment.
- ii. Section 9.5.2.7 Site development should respect and maintain the existing grades on site.
- jj. Section 9.5.2.11.f. Site development will be required to: preserve significant trees on public and private lands
- kk. Section 9.5.2.13.b.,c. External lighting for site development should utilize dark sky features and not infringe on adjacent properties
- ll. Section 9.5.2.14 Development on a site may be phased to allow for future development.
- mm. Section 9.5.3.2 Buildings must clearly address the street.
- nn. Section 9.5.3.5 Front building facades should be parallel to the street.
- oo. Section 9.5.3.18 Rooftop mechanicals will not be visible.
- pp. Section 9.5.4.3 The sharing and reduction of access points/driveways will be encouraged.
- qq. Section 9.5.4.6 Outdoor storage will not be located adjacent to, or be visible from the public realm and sensitive land uses
- rr. Section 9.5.5.4 Shared parking between developments will be encouraged, where appropriate
- ss. 9.5.5.6 Site plans will demonstrate the ability for shared servicing access between adjacent developments
- tt. Section 9.5.5.7 Service, loading and garbage storage areas should be internal to the building or located at the rear of the building and screened from the public realm

uu. Section 10 Foster a strong economy, in particular:

- a. Section 10.1.5 Provide for a wide range of employment activities including Office.
- b. Section 10.2.3 Outside of employment areas secondary office development will be encouraged to locate within Community Nodes.

vv. Section 14.1.1.1 Development applications within a Community Node may be required to demonstrate how the new development contributes to the residents and jobs target and the population to employment ratio.

ww. Section 14.8 Rathwood-Applewood Community Node

xx. Section 16.21 Rathwood Neighbourhood, in particular:

- a. Section 16.21.2.2 Special Site Policies for Site 2, lands fronting on the east side of Hickory Drive, may require a concept plan relating to, among other matters, transportation, ingress and egress

yy. Section 19.4 Development applications will be evaluated and processed in accordance with the policies of the Official Plan.

zz. Section 19.4.3 Development applications will address a variety of matters including the compatibility of the proposed development to existing or planned land uses and forms

aaa. Section 19.4.5 Various studies may be required as part of a complete development application.

Region of Peel Guidelines

7. Does the proposed development appropriately and adequately implement the Region of Peel Waste Collection Design Standards?

City of Mississauga Guidelines

8. Does the proposed development appropriately and adequately implement the City of Mississauga Townhouse Design Guidelines?

9. Does the proposed development appropriately and adequately implement the City of Mississauga Urban Design Guidelines for Back-to-Back and Stacked Townhouses?

10. Does the proposed development appropriately and adequately implement the City of Mississauga Mid-Rise Building Performance Standards, and how much weight should be given to them?

Urban Design

11. Is the site organization of the proposed development, including building heights, massing, scale, and setbacks/ stepbacks appropriate, including:
- a. Does the proposed development represent appropriate development of the blocks in terms of the height, massing and articulation?
 - b. Does the proposed development establish an appropriate built form relationship to the surrounding properties?
 - c. Does the proposed development provide adequate amenity space?
 - d. Is it appropriate to provide site access for the development with a fire route and exterior waste storage immediately adjacent to an existing single family house?

Site Plan Matters

12. Is approval of an OPA and ZBL premature in absence of clearly demonstrating that site plan issues can be addressed, namely:
- a. Waste storage and pickup
 - b. Noise and odours from the waste storage facility
 - c. Apparent differences in new grading and elevations
 - d. Lack of privacy and overlook to 4059 Hickory Drive
 - e. impact on the mature trees located at 4059 Hickory Drive

Compatibility

13. Is the proposal compatible with nearby non-residential uses and permitted non-residential uses within the area?
14. Has appropriate regard been considered for any consequential impact and in particular, access to other lands:
- a. Access
 - b. Development of other properties for a planned use

Infrastructure

15. What traffic mitigation measures, if any, are required to support the proposed development?

Servicing

16. Is the internal roadway proposed for the development adequate for vehicle movement including adequate and appropriate provision for service delivery and large vehicle movement (ie. Fire, emergency services, garbage pickup and delivery vehicles)?
17. Is the Waste Collection Point of sufficient size to accommodate the required number of bins to service the development?
18. Is the location of the Waste Collection Point going to cause adverse impacts on the abutting property at 4059 Hickory Drive such as but not limited to noise, and odours?

Section 37 Contributions

19. What is the appropriate Section 37 Contribution for the proposed developments? When is the appropriate time to determine this contribution? Why has it not yet been determined?

Good Planning & Public Interest

20. Does the proposed development represent good planning and is it in the public interest?
21. Has Mississauga prepared a Development Master Plan for the block bounded by Burnhamthorpe Road on the south, Dixie Road on the east, Rathburn Road on the north, Hickory Drive on the west to determine the most efficient way to implement and service the land use plan contained within the Official Plan for the lands in the block?