

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



ISSUE DATE: May 15, 2019

CASE NO(S): PL171389

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:	Medallion Developments
Subject:	Application to amend Zoning By-law No. 6593 - Refusal or neglect of the City of Hamilton to make a decision
Existing Zoning:	E District (Multiple Dwellings, Lodges, Clubs, Etc.)
Proposed Zoning:	E-3 District, Modified (High Density Dwellings)
Purpose:	To permit
Property Address/Description:	195 Wellington Street South
Municipality:	City of Hamilton
Municipality File No.:	ZAC-14-003
OMB Case No.:	PL171389
OMB File No.:	PL171389
OMB Case Name:	Medallion Developments v. Hamilton (City)

Heard: April 15, 2019, in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Medallion Developments (“Applicant”)	Q. Annibale
City of Hamilton (“City”)	A. Biggart
Niagara Escarpment Commission (“NEC”)	D. Kappos

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
APRIL 15, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] On or about February 3, 2014, the Applicant had filed a Zoning By-law Amendment (“ZBA”) application with the City seeking permission to develop a 20-storey rental residential apartment addition on the land it owned at 195 Wellington Street South (“Subject Lands”).

[2] The City issued a notice of complete application in February of 2014.

[3] By letter dated November 27, 2017, the Applicant appealed the ZBA application to the Tribunal as the City had failed to make a decision on its application within the statutory time frame.

[4] The first Prehearing Conference (“PHC”) was convened on October 22, 2018 at which time the above noted parties were recognized and three participants granted participant status.

[5] The Tribunal decision at that time set a date for the second PHC, and provided a timetable for the parties to prepare and submit a draft Procedural Order and Issues List.

[6] More specifically in this regard, the decision of the Tribunal dated January 11, 2019 stated:

[7] The purpose of the second PHC will be to:

- Review a draft Procedural Order (“PO”), **and Issues List and the number of witnesses expected to be called for a contested hearing**. This information will have a bearing on the number of days required for a contested hearing ... (Emphasis added)

[7] In the lead up to the second PHC, the Tribunal received a draft Procedural Order and Issues List with a completed draft hearing schedule.

[8] At the second PHC, the Tribunal dealt with the draft Procedural Order, the order of calling evidence, the draft hearing schedule and provided directions with regard to

certain revisions to the draft Procedural Order, gave direction with regard to addressing the security and privacy concerns of the third participant, and set a hearing date all for the reasons set out below.

DECISION

[9] The Tribunal was advised that the parties anticipated that a 10-day hearing would be required for this matter, and accordingly the Tribunal sets a **10-day** hearing to commence on **Monday, June 15, 2020 at 10 a.m.** at:

**Stoney Creek Municipal Service Centre
(Council Chambers)
777 Hamilton Road 8,
Stoney Creek, Ontario L8E 5J4**

[10] With regard to the draft Procedural Order, the Tribunal has made certain revisions to draft Procedural Order and Issues List at Attachment E entitled the Work Plan. The amended Procedural Order and Issues List with all the attachments is appended hereto as Attachment 1.

[11] At the second PHC, the parties had been directed to have finalized their witnesses. All parties, except the City, did so.

[12] Counsel for the City sought extra time to determine whether the City (like the NEC) might also call an expert witness in landscape architecture and visual impact analysis.

[13] Counsel for the City then requested that the draft Hearing Schedule not be finalized so that the City might determine whether additional time might be required for the witness in the hearing.

[14] The Tribunal directed that the City would have one week from the date of the second PHC to determine what it was going to do.

[15] Subsequent thereto, the Tribunal received a revised draft Hearing Schedule as Attachment E to the draft Procedural Order.

[16] There the draft proposes that the Hearing Schedule be qualified such that:

...any additional time required to accommodate and additional witness by the City will be accommodated within the time otherwise allotted to the City and the NEC by the Schedule, as determined by the City and the NEC.

[17] It is trite to say that the Tribunal is the master of its own process.

[18] With the number of legacy cases such as this, and the reduced complement of Tribunal members, the Tribunal has decided to implement Hearing Schedules for hearings of a certain duration.

[19] The Tribunal at the first PHC had directed that a draft hearing schedule be prepared with the number of witnesses to be called.

[20] The other parties obviously understood and complied with the direction.

[21] The City did not.

[22] To assist the City, the Tribunal granted additional time to determine what witnesses it was going to call.

[23] Notwithstanding that additional time, the City still had not made a determination.

[24] Accordingly, the Tribunal has amended the draft Hearing Schedule to confirm that if the City wishes to call an additional expert witness in the field of landscape architecture and visual impact analysis, it will do so within the time that has been allotted to the City, and that time will not infringe upon or prejudice the time allotment provided for the NEC case, (which the Tribunal would point out, was reduced at the second PHC).

[25] With regard to the concerns of the third participant, on the advice of counsel, the Tribunal directs that the third participant shall provide his/her participant statement directly to the Tribunal's Case Coordinator and the Case Coordinator shall in turn provide it to all the parties.

[26] If the third participant requires assistance he/she may contact the Tribunal's Citizen Liaison Coordinator at ELTO.CLO@Ontario.ca or 416-326-6792 or toll free at 1-866-448-2248, who may be of assistance.

[27] There will be no further notice of the June 15, 2020 hearing.

[28] I am not seized.

[29] Scheduling permitting, I may be contacted for case management purposes.

[30] This is the Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
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

ATTACHMENT 1



Local Planning Appeal Tribunal Procedural Order

ISSUE DATE:

CASE NO(S). PL171389

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

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

Organization of the Hearing

2. The hearing will begin on June 15, 2020 at 10:00 a.m. at Stoney Creek Municipal Service Centre (Council Chambers) 777 Hamilton Regional Rd 8, Stoney Creek, ON L8E 5J4.

3. The length of the hearing will be about 10 days.

4. The parties and participants to the hearing and their contact information is set out on the list attached as Attachment "A" to this Order.

5. The Issues are set out on the list attached as Attachment "B" to this Order. 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 in the hearing shall be as set out in Attachment “C” to this Order. The hearing shall generally proceed in accordance with the schedule set out in the Work Plan attached as Attachment “E” to this Order.

7. Definitions:

- a) **Written evidence** has the meaning as defined in the LPAT Rules of Practice and Procedure;
- b) **Visual evidence** has the meaning as defined in the LPAT Rules of Practice and Procedure;
- c) An **expert witness statement** is a short written outline by an **expert witness** which 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 reasons for the opinions and (5) a list of reports which the witness will refer to at the hearing.
- d) 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 address and an outline of the witness' evidence on those issues; together with a list of reports, if any, to which the witness will refer at the hearing.
- e) 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 will address and an outline of the evidence on those issues; together with a list of reports, if any, which the participant will refer to at the hearing.

Requirements Before the Hearing

8. Expert witnesses in the same field shall have a meeting May 6, 2020 to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk on or before May 15, 2020.

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before January 15, 2020.

10. 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 section 12. 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. A witness or participant must provide to the Tribunal and the parties a witness or participant statement on April 16, 2020, or the witness or participant may not give oral evidence

at the hearing, except that Participant #3 shall only be required to file the statement with the Case Co-ordinator.

12. On April 16, 2020, the parties shall provide copies of their witness and/or expert witness statements to the other parties and to the municipal Clerk.

13. Any visual evidence which is illustrative only will be available for inspection by all parties no later than June 1, 2020. Any visual evidence which adds to the substance of a party's position must be provided with the witness statements.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before May 1, 2020.

15. 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.)

16. A party who provides a witness' written evidence 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.

17. Additional Rules for Expert Witnesses:

- (i) If an expert witness references other reports or documents in his or her witness statement that are not otherwise produced as written evidence, they must be produced upon request of another party.
- (ii) An expert may not give oral evidence at the hearing unless the expert has provided to the other parties all written evidence he or she will introduce, and has filed and delivered a witness statement, unless the Tribunal orders otherwise.
- (iii) If an expert is summoned to give evidence but is not retained by that party, the expert is not required to provide written evidence in advance of the hearing. However, the party requesting the witness must provide to all other parties within the times given above a statement of the issues which the expert will address and a brief outline of the anticipated evidence of the expert on these issues.

18. Documents shall be delivered in duplicate paper copies as well as electronically (by email). The paper copies shall be delivered by personal delivery, or registered or certified mail. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification. Any architectural drawings, site plans, servicing or similar drawings shall include a bar scale and where sent electronically shall be in a PDF format that plots to scale.

19. No adjournments or delays will be granted before or during the hearing except on consent of all the parties or for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

20. The procedural requirements and deadlines that parties and participants are required to meet in advance of the hearing are summarized in the schedule of dates provided as Attachment "F" to this Order.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member)	Date:
)	
)	

TRIBUNAL REGISTRAR

ATTACHMENT "A"

LIST OF PARTIES AND PARTICIPANTS

Parties

Party Name	Representative Contact Information
Medallion Developments	Loopstra Nixon LLP 600-135 Queens Plate Drive Toronto, Ontario M9W 6V7 Quinto Annibale qannibale@loonix.com Brendan Ruddick bruddick@loonix.com
City of Hamilton	Ritchie Ketcheson Hart & Biggart Barristers and Solicitors 206 - 1 Eva Road Toronto, ON M9C 4Z5 R. Andrew Biggart abiggart@ritchieketcheson.com Christina Kapelos tkapelos@ritchieketcheson.com
Niagara Escarpment Commission	Ministry of Natural Resources and Forestry 99 Wellesley Street West, Room 3420 Toronto, ON M7A 1W3 Demetrius Kappos demetrius.kappos@ontario.ca

Participants

Participant Name	Participant Address and Contact Information
Wendelyn Braun	#244-195 Wellington St S City of Hamilton L8N 2R7 wabraun@hotmail.com
Ali Kasongo	#202-195 Wellington St S City of Hamilton L8N 2R7 A_kasongo@yahoo.fr
<i>Participant #3 [who did not wish to be identified]</i>	

ATTACHMENT “B”

ISSUES LIST

Niagara Escarpment Commission and City of Hamilton

1. Has the proponent demonstrated that the proposed rezoning from E-District to E-3 District zoning on the subject property in order to accommodate the development of a 17 to 20-storey residential apartment building is appropriate?
2. Has the proponent demonstrated that the proposed Zoning By-law Amendment is in conformity with the Niagara Escarpment Plan (2017) (“NEP”)? Relevant to this assessment includes consideration of the Purpose and Objectives of the *Niagara Escarpment Planning and Development Act* and the NEP, in particular objectives 4, 5 and 6; as well as the following sections of the NEP: 1.7.1, 1.7.5.1, 2.2.1 and 2.13 as well as applicable Appendix 2 Definitions.
3. Has the proponent demonstrated that the proposed Zoning By-law Amendment is consistent with the Provincial Policy Statement (2014) (“PPS”)? Relevant to this assessment includes consideration of the following sections: 1.1.1, 1.1.3, 1.1.3.3, 1.4, 1.7.1 and 2.1.1.
4. Has the proponent demonstrated that the proposed Zoning By-law Amendment is in conformity with the Urban Hamilton Official Plan (“UHOP”)? Relevant to this assessment includes consideration of the following sections: B.2.4.1.4, B.2.4.2.2, B.3.3.5, B.3.4.2.1, C.1.0 (Introduction) C.1.1, C.1.1.1, C.1.1.6, C.1.1.10(a), E.3.2.7(d) and (e) and E.3.6.7 (g).
5. Has the proponent provided a sufficiently comprehensive visual impact assessment study, for the most recent proposal, to properly evaluate the degree of change that the proposed development will have on public visual access to the Niagara Escarpment?
6. Does the proponent’s Visual Impact Assessment (VIA) demonstrate conformity with the NEP, conformity with the UHOP and consistency with the PPS?
7. Does the proposed Zoning By-law Amendment represent good planning and is it in the public interest?

Note: The identification of an issue on this list does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the hearing.

ATTACHMENT "C"

ORDER OF EVIDENCE

1. Medallion Developments
2. City of Hamilton
3. Niagara Escarpment Commission
4. Participants
5. Medallion Developments

ATTACHMENT “D”

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties’ comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal’s Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at <http://elto.gov.on.ca/tribunals/lpat/about-lpat/>.

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 prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **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.

Witness Statements: 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 will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

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.

ATTACHMENT "E"

WORK PLAN*

Day 1 – June 15, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Preliminary Motions/Procedural Matters	2 hours	

Opening Submissions

Medallion Developments	20 mins
City of Hamilton	20 mins
Niagara Escarpment Commission	20 mins

Medallion's Case Starts

Planner Examination in Chief	2.5 hours
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Day 2 – June 16, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Planner Examination in Chief	1 hour	All
Cross Examination	3 hours	
Re-examination	30 mins	
Urban Designer or Landscape Architect Examination in Chief	1 hour	

Day 3 – June 17, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Urban Designer or Landscape Architect Examination in Chief	3.5 hours	2, 3, 4, 5, 6
Cross Examination	2 hours	

* NOTE: the Work Plan is subject to witnesses being identified by no later than January 15, 2020, as provided in paragraph 9 of this Order. Any additional time required to accommodate an additional witness by the City will be accommodated within the time already allocated to the City as set out above

Day 4 – June 18, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Urban Designer or Landscape Architect Cross Examination	2 hours	
Re-examination	30 mins	

Medallion’s Case Ends

City’s Case Starts

City Planner Examination in Chief	3 hours	
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Day 5 – June 19, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
City Planner Examination in Chief	1.5 hours	
Cross Examination	3.5 hours	
Re-examination	30 mins	

City’s Case Ends

Day 6 – June 22, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Landscaping Architecture and Visual Impact Assessment (one witness) Examination in Chief	5.5 hours	2, 5, 6

NEC’s Case Starts

Day 7 – June 23, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Landscaping Architecture and Visual Impact Assessment (one witness) Examination in Chief	1 hour	
Cross Examination	4 hours	
Re-examination	30 mins	

Day 8 – June 24, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Planning (one witness) Examination in Chief Cross Examination	4 hours 0.5 hours	All

Day 9 – June 25, 2020

	<u>Time Estimate</u>	<u>Issues to be Addressed</u>
Planning (one witness) Cross Examination Re-examination	3 hours 30 mins	

NEC's Case Ends

Participants

20 minutes each (1 hour total). The time and dates that the Participants will be heard are fixed as follows:

- Wendelyn Brown – June 25, 2020 from 3:00 to 3:20 pm
- Ali Kasongo – June 25, 2020 from 3:20 to 3:40 pm
- Participant #3 – June 25, 2020 – from 3:40 to 4:00 pm

Medallion Reply if Needed

Day 10 – June 26, 2020

	<u>Time Estimate</u>
Final Arguments	
Medallion	1.0 hours
City	1.0 hours
NEC	1.0 hours
Medallion Reply	30 mins

ATTACHMENT "F"

SUMMARY OF KEY DATES

Description	Date/Deadline
Witness List	January 15, 2020
Participant Statements/Witness Statements/Expert Witness Statements	April 16, 2020
Reply Witness Statements	May 1, 2020
Meeting of Experts	May 6, 2020
Agreed Statement of Facts	May 15, 2020
Visual Evidence	June 1, 2020
Hearing Begins	June 15, 2020