

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



**ISSUE DATE:** January 28, 2019

**CASE NO(S):** PL180255

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

Applicant and Appellant:	Television City Hamilton Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	Medium Density Residential
Proposed Designated:	Mixed Use
Purpose:	To permit the development of mixed-use multiple dwelling consisting of two towers and connecting base
Property Address/Description:	163 Jackson Street West
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-17-27
OMB Case No.:	PL180255
OMB File No.:	PL180255
OMB Case Name:	Television City Hamilton 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:	Television City Hamilton Inc.
Subject:	Application to amend Zoning By-law No. (05-200) - Neglect of the City of Hamilton to make a decision
Existing Zoning:	Downtown Multiple Residential (06) Zone
Proposed Zoning:	Site Specific Downtown Multiple

Purpose:	Residential (06, XXX) Zone To permit the development of mixed-use multiple dwelling consisting of two towers and connecting base
Property Address/Description:	163 Jackson Street West
Municipality:	City of Hamilton
Municipality File No.:	ZAC-17-063
OMB Case No.:	PL180255
OMB File No.:	PL180256

**Heard:** October 26, 2018 in Hamilton, Ontario

### **APPEARANCES:**

#### **Parties**

#### **Counsel\*/Representative**

Television City Hamilton Inc.

N. Smith\*

City of Hamilton

S. Chisholm\*

Jennifer Balshaw

Self-represented

### **DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE TRIBUNAL**

[1] Television City Hamilton Inc. (“Television City”) wishes to develop a site at 163 Jackson Street West (“Subject Site”) in the City of Hamilton (“City”). In support of this intention, Television City applied for amendments to the City’s official plan and to its applicable zoning by-law. The City failed to make a decision on these applications and Television City appealed these matters to this Tribunal.

[2] This was the first prehearing in these matters.

[3] Several persons attended and were added as Parties or Participants. Subsequent to the prehearing, some of those who had been added as Parties considered their requests further and advised the Tribunal that they wished, instead, to be Participants. Since there had been a number of questions at the prehearing about the responsibilities of Parties and Participants, the Tribunal canvassed Television City

and the City in advance to determine if there was consent or no objection to the possible post-prehearing requests for this change in status. Television City and the City both advised that they had no objection to the possible post-prehearing change. On that basis, only one additional Party has retained Party status.

[4] The Tribunal confirms the addition of Jennifer Balshaw as a Party to these proceedings.

[5] The Tribunal also confirms the following as Participants in these proceedings:

<b>Participant</b>	<b>Representative</b>
Durand Neighbourhood Association Incorporated	Janice Brown
Lachan Holmes	
Patrick Brown	
Sadhna Jayatunge	
Amanda Smith	
Marni Paikin	
Wentworth Condominium Corp. 171	Sharon Cole

[6] The Tribunal reviewed a draft Procedural Order but, with the addition of Parties and some uncertainty about their intention to continue as Parties, the Tribunal directed the Parties to engage in further discussion and refinement of the Issues List.

[7] The Procedural Order to govern these matters is found at Attachment 1.

[8] The Tribunal has set these matters down for a five-day hearing, commencing on

**Monday, March 25, 2019 at 10 a.m. at:**

**Hearing Room 101  
Municipal Building (Hamilton)  
50 Main Street East  
Hamilton, Ontario**

[9] No further Notice will be given.

[10] This panel of the Tribunal is not seized.

**ORDER**

[11] The Tribunal orders that:

1. Jennifer Balshaw is added as a Party to these proceedings.
2. Participants added to these proceedings are as set out in paragraph 5, above.
3. The Procedural Order to govern these matters is found at Attachment 1 to this decision.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://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](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## ATTACHMENT 1

### LOCAL PLANNING APPEAL TRIBUNAL

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

Applicant and Appellant: Television City Hamilton Inc.  
Subject: Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment  
Existing Designation: Medium Density Residential  
Proposed Designated: Mixed Use  
Purpose: To permit the development of mixed-use multiple dwelling consisting of two towers and connecting base  
Property Address/Description: 163 Jackson Street West  
Municipality: City of Hamilton  
Approval Authority File No.: UHOPA-17-27  
OMB Case No.: PL180255  
OMB File No.: PL180255  
OMB Case Name: Television City Hamilton 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: Television City Hamilton Inc.  
Subject: Application to amend Zoning By-law No. (05-200) - Neglect of the City of Hamilton to make a decision  
Existing Zoning: Downtown Multiple Residential (06) Zone  
Proposed Zoning: Site Specific Downtown Multiple Residential (06, XXX) Zone  
Purpose: To permit the development of mixed-use multiple dwelling consisting of two towers and connecting base  
Property Address/Description: 163 Jackson Street West  
Municipality: City of Hamilton  
Municipality File No.: ZAC-17-063  
OMB Case No.: PL180255  
OMB File No.: PL180256

### PROCEDURAL ORDER

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 Monday, March 25, 2019 at 10:00 a.m. in Hearing Room 101, 50 Main Street East in the municipality of the City of Hamilton.
3. The length of the hearing will be about 5 (five) days.
4. The parties and participants identified at the prehearing conference are:

<b>Appellant/Party</b>	<b>Counsel/Agent</b>	<b>Contact</b>
Television City Hamilton Inc.	Nancy Smith	Turkstra Mazza Associates 15 Bold Street, Hamilton, ON, L8P 1T3  <a href="mailto:nsmith@tmalaw.ca">nsmith@tmalaw.ca</a> Tel: 905 529 3476
City of Hamilton	Stephen Chisholm	City of Hamilton Legal and Risk Management Services, 50 Main Street East, 4 <sup>th</sup> Floor, Hamilton, ON, L8N 1E9  <a href="mailto:stephen.chisholm@hamilton.ca">stephen.chisholm@hamilton.ca</a> Tel: 905 546 2424 ext. 3663
Jennifer Balshaw		181 Jackson Street West, Unit 902, Hamilton, ON, L8P 1L8  <a href="mailto:jennifer.balshaw@mohawkcollege.ca">jennifer.balshaw@mohawkcollege.ca</a>

<b>Participant</b>	<b>Address</b>	<b>Contact</b>
Durand Neighbourhood Association Incorporated	c/o Durand Coffee/Chris Redmond 142 Charlton Avenue West, Hamilton, ON, L8P 2C7	Janice Brown <a href="mailto:president@durandna.com">president@durandna.com</a>
Lachan Holmes	50 Yonge Street, Hamilton, ON, L8N 2V2	<a href="mailto:lachielan@me.com">lachielan@me.com</a>
Patrick Brown	123 Jackson Street West, Hamilton, ON, L8P 1L6	<a href="mailto:pbrown19462011@hotmail.com">pbrown19462011@hotmail.com</a>
Sadhna Jayatunge	1 Wesanford Place, Hamilton, ON, L8P 1N5	<a href="mailto:sadhna.jayatunge@gmail.com">sadhna.jayatunge@gmail.com</a>
Amanda Smith	3 Wesanford Place, Hamilton, ON, L8P 1N5	<a href="mailto:amanada@honeyroasted.ca">amanada@honeyroasted.ca</a>
Marni Paikin	PH-1, 67 Caroline Street South, Hamilton, ON, L8P 3K6	<a href="mailto:paikin@nas.net">paikin@nas.net</a> Tel: 905 525 9081
Wentworth Condominium Corp 171	Sharon Cole	67 Caroline Street South, Suite 7E, Hamilton, L8P 3K6  <a href="mailto:scole15@cogeco.ca">scole15@cogeco.ca</a>

5. The Issues are:

**City of Hamilton**

- 1) Does the design of the proposed development appropriately consider the character of and integration with the surrounding context and neighbourhood, in conformity with the requirements of ss. B.2.4.1.4, B.3.3.2.6 of the Urban Hamilton Official Plan (“UHOP”) and ss. B.6.1.5.7, B.6.1.5.9, B.6.1.5.12 of the Downtown Hamilton Secondary Plan?
  
- 2) Does the proposed development promote a comfortable pedestrian environment as required by the UHOP and specifically ss.E.2.3.1.13, B.6.1.7.9, E.4.4.10 and E.4.4.11 thereof?

- 3) Does the proposed development adequately address and minimize sun shadow impacts on public sidewalks or public spaces as required by ss. B.3.3.3.2, B.3.3.3.3, B.3.3.3.4 of the UHOP and ss. B.6.1.5.7, B.6.1.5.9 and B.6.1.5.12 of the Downtown Hamilton Secondary Plan?

**Jennifer Balshaw**

- 1) Privacy
- 2) View
- 3) Light/shadows

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. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

**Requirements Before the Hearing**

7. On or before January 18, 2019, the parties shall provide a Witness List (to include area of expertise and Curriculum Vitae, not to exceed 4 pages, for each witness) to the other parties and to the Clerk at the City of Hamilton.
8. If a party intends to challenge the qualification and expertise of a witness, that party shall bring a motion in accordance with the Tribunal Rules on or before February 1, 2019.
9. 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 13. 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.



- 10.** A participant must provide to the Tribunal and the parties a participant statement on or before February 22, 2019 or the witness or participant may not give oral evidence at the hearing.
- 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 section 13.
- 12.** On or before February 15, 2019, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk of the City of Hamilton.
- 13.** On or before March 8, 2019, the parties shall provide copies of their visual evidence to all of the other parties.
- 14.** Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before March 8, 2019.
- 15.** A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with Tribunal Rule 10.
- 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.** Documents may be delivered by personal delivery, e-mail, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax and e-mail shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
- 18.** 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.

**19. Summary of key dates:**

<b>Date</b>	<b>Event</b>
January 18, 2019	Exchange of Witness Lists (names, disciplines and order to be called)
February 1, 2019	Expert Witness Challenge
February 15, 2019	Exchange of Witness Statements, Summoned Witness Outlines and Expert Reports
February 22, 2019	Participant Statements
March 8, 2019	Exchange of Reply Witness Statements (if any)
March 8, 2019	Exchange of Visual Evidence (if any)
March 25, 2019	Hearing commences

**This Member is not seized.**

**So orders the Tribunal.**

## ATTACHMENT TO SAMPLE PROCEDURAL ORDER

### 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 [www.elto.gov.on.ca](http://www.elto.gov.on.ca).

### 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.