

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



ISSUE DATE: May 29, 2020

CASE NO(S): PL180818

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 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Red Hill Cannabis Inc.
Subject: Proposed Official Plan Amendment No. OPA 21
Municipality: City of Hamilton
LPAT Case No.: PL180818
LPAT File No.: PL180818
LPAT Case Name: Red Hill Cannabis Inc. et al v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Red Hill Cannabis Inc.
Subject: By-law No. 18-266
Municipality: City of Hamilton
LPAT Case No.: PL180818
LPAT File No.: PL180819

PROCEEDING COMMENCED UNDER subsection 17(45) of the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sched. 1

Motion By: City of Hamilton
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Red Hill Cannabis Inc.
Subject: Proposed Official Plan Amendment No. OPA 21
Municipality: City of Hamilton
LPAT Case No.: PL180818
LPAT File No.: PL180818

PROCEEDING COMMENCED UNDER subsection 34(25) of the *Local Planning Appeal Tribunal Act*, 2017, S.O. 2017, c. 23, Sched. 1

Motion By: City of Hamilton

Purpose of Motion:	Request for an Order Dismissing the Appeal
Appellant:	Red Hill Cannabis Inc.
Subject:	By-law No. 18-266
Municipality:	City of Hamilton
LPAT Case No.:	PL180818
LPAT File No.:	PL180819

Heard: In writing

APPEARANCES:

Parties

City of Hamilton

Counsel

P. MacDonald

DECISION DELIVERED BY R.G.M. MAKUCH AND ORDER OF THE TRIBUNAL

[1] The City of Hamilton (“City”) brings this motion for:

1. An order dismissing the appeal of Red Hill Cannabis Inc. (“Red Hill”) against certain parts of the Rural Hamilton Official Plan (“RHOP”) and City of Hamilton Zoning By-law No. 05-200 (the “ZBL”), being Rural Hamilton Official Plan Amendment No. 21 (“RHOPA 21”) and Zoning By-law No. 18-266 (“ZBL 18-266”, and together, the “Instruments”), for a failure to provide information to the Tribunal as directed and to advance the matter diligently.
2. An order declaring that those parts of RHOPA 21 which remained under appeal by Red Hill shall come into effect pursuant to subsections 17(30) and 17(30.1) of the *Planning Act*, R.S.O. 1990, c. P.13 (the “Act”).
3. An order declaring that those parts of the ZBL which remained under appeal by Red Hill shall come into effect pursuant to subsection 34(30) of the Act.
4. In the alternative, an order declaring that those portions of the Instruments that remain under appeal by Red Hill shall come into effect, but shall remain

under appeal only for certain lands owned by Red Hill, as described in the affidavit of Joanne Hickey-Evans sworn on April 28, 2020 (JHE Affidavit), being the lands known municipally as 286-288 Green Mountain Road (“Subject Lands”);

[2] The Motion is brought on the following grounds:

1. The Instruments were appealed by Red Hill and The Green Organic Dutchman Holdings Ltd. (“TGOD”). Beleave Inc. (“Beleave”) was later granted party status in the appeal.
2. A prior order of the Tribunal in this matter dated May 10, 2019 brought into force the Instruments across the entire City, except for certain provisions that remained under appeal on a City-wide basis.
3. Since the issuance of that order, the other Appellant in this matter (TGOD) and the only other party (Beleave) have withdrawn their appeals, leaving Red Hill as the only remaining appellant.
4. Red Hill has failed to attend a prehearing conference, has failed to follow directions of the Tribunal, has not provided an issues list to the City as directed by the Tribunal, has not provided information regarding retainer of counsel or another representative as directed by the Tribunal, and has not communicated with the City regarding the status of its appeal.

[3] The materials before the Tribunal on this Motion are the following:

1. Notice of Motion dated May 4, 2020;
2. Affidavit of Jillian Manser, sworn April 23, 2020; and
3. Affidavit of Joanne Hickey-Evans, sworn April 28, 2020.

[4] The Appellant Red Hill Cannabis Inc. has not responded to this motion.

[5] Subsection 17(45)5 of the Act provides that the Tribunal may dismiss all or part of an appeal without holding a hearing if the appellant has not responded to a request by the Tribunal within the time specified by the Tribunal.

[6] Subsection 34(25)5 of the Act provides a similar provision dealing with dismissals of appeals from zoning by-laws passed under Section 34 of the Act.

[7] The Tribunal is satisfied based on the uncontroverted affidavit evidence before it that the Motion should succeed.

[8] No one appeared at the February 13, 2020 Telephone Conference Call ("TCC") on behalf of Red Hill, nor did anyone contact the City or the Tribunal prior to the Case Management Conference ("CMC") via TCC. Furthermore, no one has contacted the Tribunal since February 13, 2020 to explain RedHill's refusal to comply with the order of the Tribunal.

[9] At the February 13 CMC via TCC, the City requested that it be permitted to bring a motion in writing for an order dismissing the appeals on the grounds that Red Hill has failed and/or refused to comply with directions from the Tribunal, and that in the alternative the City bring a motion to scope Red Hill's appeal to a site-specific appeal. The Tribunal granted the request that such motion could be made in writing.

[10] The Tribunal is satisfied based on the affidavit evidence of Joanne Hickey-Evans that RHOPA 21 and ZBLA No. 18-266 represent good planning and are in public interest.

[11] Accordingly, the appeal by Red Hill Cannabis Inc. is hereby dismissed.

[12] It is so ordered.

“R.G.M. Makuch”

R.G.M. MAKUCH
VICE-CHAIR

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
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