

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



ISSUE DATE: September 30, 2020

CASE NO(S): PL190517

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 Subject:	J & B Developments LP Request to amend the Official Plan - Refusal of request by City of Hamilton
Existing Designation:	M-4
Proposed Designated:	Site specific (To be determined)
Purpose:	To permit a 9 storey mixed use building
Property Address/Description:	600 James Street North
Municipality:	City of Hamilton
LPAT Case No.:	PL190517
LPAT File No.:	PL190517
LPAT Case Name:	J & B Developments LP 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: Subject:	J & B Developments LP Application amend Zoning By-law No. 6593 - Refusal of Application by City of Hamilton
Existing Zoning:	H/S-1783-HCommunity Shopping and Commercial
Proposed Zoning:	Site specific (To be determined)
Purpose:	To permit a 9 storey mixed use building
Property Address/Description:	600 James Street North
Municipality:	City of Hamilton
Municipality File No.:	ZAC-18-024
LPAT Case No.:	PL190517
LPAT File No.:	PL190518

Heard: September 11, 2020 by Video Hearing

APPEARANCES:

Parties

Counsel

J & B Developments LP
("Applicant")

Denise Baker

City of Hamilton ("City")

Brian Duxbury

Harbour West Neighbours Inc.
("HWNI")

Herman Turkstra

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER
ON SEPTEMBER 11, 2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This is the first Case Management Conference ("CMC") conducted by the Tribunal. The previously scheduled CMC was adjourned and rescheduled to this date due to limitations arising from the COVID-19 Pandemic and the Province's Emergency Order.

[2] The Appeals relate to the Applicant's application for two amending instruments, as identified in the Title of Proceedings above, to facilitate the development of a nine-storey mixed use development with 60 dwelling units, 134 square metres ("sq m") of commercial space and 33 parking spaces located (the "Development") at 600 James Street North ("Subject Property"), in the City. Council for the City refused both applications on September 11, 2019.

[3] The Affidavit of Service with respect to Notice of the CMC was marked as Exhibit 1 to the hearing. It is noted that inadvertently, the login and call-in coordinates for this CMC video hearing as assigned, were identical to an entirely unrelated CMC also scheduled before another Member at the same time. The Tribunal was able to preserve

effective service of the Notice of the CMC by “redirecting” most parties and participants to an alternate video hearing slot and rerouting all persons attending the concurrently scheduled CMC at the identified time, to the new video hearing coordinates.

PARTIES OR PARTICIPANTS

[4] Prior to the CMC, in response to service of the Notice of the CMC (Exhibit 1), the Tribunal received a number of written requests for status as either a party or participant.

[5] The Tribunal received submissions from HWNI, the Applicant and the City with respect to the request for party status by HWNI. Some questions were raised with respect to the intended participation of HWNI, an incorporated residents’ association established since 2003, which has been involved in planning matters arising in the North End neighbourhood in Hamilton. After reviewing the written submission, and the submissions of counsel, the Tribunal grants HWNI party status for the purposes of the hearing of these Appeals.

[6] The Tribunal also received a written submission from Ms. Elizabeth Poynter who requested party status on her behalf, and purportedly, on behalf of other nearby neighbours whose position on the issues is similar to that of Ms. Poynter. Most of such residents had already requested Participant status. With inquiries to Ms. Poynter from the Panel, as to her intended participation, it was determined that Ms. Poynter did not intend to present evidence or call witnesses to address the issues in the Appeals, or to otherwise actively participate in the hearing process beyond the making of opening and closing submissions as to her views and those of other neighbours. Ms. Poynter’s written submission was reviewed, and comments were invited from counsel.

[7] Although satisfying the legislative tests necessary to be a party, beyond providing her contribution of views and comments to the Tribunal, under the circumstances, the Tribunal is not of the view that Ms. Poynter’s participation as a party is warranted. Granting Ms. Poynter such a role under Rule 8.1 will not, in the Tribunal’s view, assist it

in the effective and complete adjudication of the issues. Accordingly, Ms. Poynter's request for Party status is denied. Ms. Poynter will instead be granted participant status, as will Mr. John Price, who was one of the local residents who had not filed his request to the Tribunal but did wish to have his views communicated at the hearing.

[8] The Tribunal received a number of written requests for Participant status and was advised that one further person, Ms. Joanne Lederer also requested such status, but did not have email, and was unable to attend the CMC due to health issues. Counsel did not have any difficulties with any of the requests for Participant status and accordingly, the following persons are granted Participant status for the purposes of the Appeal, and may file their written submission with the Tribunal in accordance with Rule 7 of the *Tribunal's Rules of Practice and Procedure* and s. 33.2 of the *Local Planning Appeal Tribunal Act, 2017* ("LPATA"), within the timeline, and in the manner, provided for in the Procedural Order:

1. Elizabeth Poynter
2. Tracy Geddes
3. Carlos and Amelia Catarino
4. Susan Tesluk
5. Barbara Johnston
6. Amy Rolfe
7. Joanne St. Amand
8. Kevin Abbott
9. Wade and Cheryl Hicken
10. Tony Blanken
11. Joanne Lederer
12. John Price

MEDIATION AND SETTLEMENT

[9] The Tribunal explored the possibility of mediation or settlement with the parties. The parties, as they are represented by experienced counsel, may be engaging in

discussions amongst themselves with a view to resolving the issues in dispute, but otherwise do not unanimously indicate that mediation services should be requested from the Tribunal.

INTENDED MOTION BY HWNI

[10] From email communications in the file, the Tribunal was aware, in advance of the CMC, that HWNI was, if granted Party status, considering a motion (the “Intended Motion” or “Motion”) to request a “joint” or “combined” hearing of these Appeals and the Appeal in another file before the Tribunal relating to a development application on a nearby property at 428 James Street, under Tribunal File No. PL190359 (the “PL190359 Appeal”). The applicant in this other development application is not the same as the applicant in these Appeals, though they share common counsel, Ms. Baker. Unlike these Appeals, the subject application in the PL190359 Appeal was approved by the City and appealed by HWNI as a third-party appellant. Counsel for the City may not be the same in each of these Tribunal files. Notably, the PL190359 Appeal is governed by the *Planning Act* and the *LPATA* as they were amended by Bill 139 whereas these Appeals will be adjudicated under the legislation as amended by Bill 108.

[11] The Panel was advised by counsel that the CMC in the PL190359 Appeal is scheduled to be conducted on October 14, 2020.

[12] HWNI confirmed that it was required to wait to bring this Intended Motion at the October 14 CMC, since, until then, the applicant in that PL190359 Appeal, under the applicable legislation, will not have been granted Party status. Until today, HWNI had, as well, not been granted Party status in these Appeals. Both the City and the Applicant are opposed to the suggested request for a combined hearing. Mr. Turkstra clarified that it would be his client’s likely request that the PL190359 Appeal not necessarily be heard at the same time as these Appeals, but rather, that it be heard on the day immediately after the hearing of these Appeals, presumably by the same member.

[13] The Applicant in the PL190359 Appeal, in the ordinary course, cannot be granted party status under Bill 139, until the CMC is scheduled, and thus, technically, may not be served with the Intended Motion in that file until that CMC is conducted on October 14, 2020. Notwithstanding this technical limitation, which would thus delay service and the scheduling of the Motion, (and the scheduling of the hearing of these Appeals) there are exceptional circumstances which, in the Tribunal's view, warrant the assistance of the Tribunal in addressing and abridging the formalities of service of the Notice of Motion relating to both these appeals and the PL190539 Appeal at this time. The Tribunal recognizes that:

- (a) Both the Applicant in this Appeal, and the Applicant in the PL190359 Appeal, have an obvious interest in the subject matter of the Intended Motion, and both applicants are represented by the same counsel. Counsel for both applicants is obviously aware of the nature of the Motion.
- (b) Counsel for HWNI has indicated a willingness to agree that service of the Notice of Motion on Ms. Baker will be effective both as counsel on behalf of the Applicant in these Appeals but also on behalf of the applicant in the PL190359 Appeals.
- (c) Ms. Baker is also agreeable to this arrangement for dual service.
- (d) Although the applicant in the PL190359 Appeals can only be granted status at the first CMC at that file, this Panel member recognizes that the body of decisions of the Tribunal on the question of granting an applicant status in appeals under Bill 139, has generally been permissive based upon the obvious interest of the applicant in such appeals. The likelihood that Ms. Baker's other client will be granted party status in the PL190359 Appeal is high.
- (e) Although it is certainly possible that some other person or entity could be granted party status in the PL190359 Appeals, who might have an interest

in the Intended Motion, the indication at this point does not suggest that is likely. The discretion will of course remain with the presiding Panel to address any issues that might arise in this respect, if any.

- (f) In the event the applicant in PL190359 Appeal is, for some reason, not granted party status there is no indication of any prejudice to any person or party by the “premature” filing of responding materials to the Intended Motion by that applicant, as well as the Applicant in these Appeals. All parties will have the opportunity to attend to the hearing of the Motion on October 14, 2020.
- (g) Circumstances arising from the COVID-19 Pandemic have impacted the scheduling of these Appeals and others. In order to ensure that the Motion is adjudicated in a timely matter, such that it will not delay the scheduling of the hearing of these Appeals, or the PL190359 Appeal, there is sufficient reason to warrant this Panel member, on this CMC, directing that the applicant in the PL190359 Appeal be served with, and be permitted to respond to, the Intended Motion in advance of being granted applicant status by the Panel in that first CMC. The circumstances, in the view of the Tribunal, warrant such an unusual arrangement to secure a fair, just and expeditious determination of both appeals.

[14] The Tribunal will accordingly exercise its discretionary powers, in the interests of expediency and efficiencies, and for the reasons indicated, and directs as follows:

- (a) If the Intended Motion is to be served by HWNI it shall be returnable at the CMC hearing event in the PL190359 Appeal, currently scheduled for October 14, 2020 with service on all parties to these Appeals and the existing statutory party in the PL190359 Appeal;

- (b) upon the consent of the parties, service of the Notice of Motion on counsel for the Applicant in these Appeals will be deemed to also be effective upon the applicant in the PL190359 Appeal;
- (c) also upon the consent of the parties, the applicant in the PL190359 Appeal shall be permitted to respond to the Intended Motion in accordance with the *Tribunal's Rules of Practice*, notwithstanding the fact that it shall not yet have been granted party status in that Appeal. On the assumption that party status will be granted by the assigned Panel to the applicant in the PL190359 Appeal, the applicant's Response to Motion shall be deemed to be properly before the Tribunal in the hearing of the Motion.

[15] The Tribunal has addressed the matter of scheduling the hearing of these Appeals, and the hearing of the PL190359 Appeal, as it relates to the Intended Motion, in that section of this Decision.

PROCEDURAL ORDER AND STATUS REPORT

[16] The Tribunal reviewed the revised draft Procedural Order submitted by the Applicant, with the consensus of the City, and HWNI. Based upon the matters addressed in the CMC, the Tribunal directed that the Procedural Order be amended by the Applicant and forwarded to the Tribunal. Amendments were to: utilize the version of the draft PO used for electronic hearings; update the list of Participants and Parties; and insert all dates for the satisfaction of all pre-hearing requirements based on the hearing dates assigned by the Tribunal subsequent to the CMC. The hearing dates were subsequently communicated to the Parties and the revised Procedural Order, with the consent of all parties, was provided to the Panel for final review.

[17] The form of the draft PO shall accordingly issue in the form attached to this Decision as **Attachment 1**.

[18] The hearing dates are now confirmed below.

[19] The parties are, however, to jointly report to the Tribunal on or before **Tuesday, December 22, 2020** confirming the total number of days required for the hearing, supported by a detailed draft workplan setting out the anticipated order and schedule of witnesses, the estimated time frames for the evidence in chief, cross-examination and re-examination for all scheduled witnesses, as well as the time allotted for opening and closing submissions and any anticipated preliminary motions or matters. The purpose of the draft Workplan is to: determine whether any scheduled days for the hearing may be withdrawn from the calendar; permit the Tribunal to consider preliminary matters in advance of the hearing; and assist the Tribunal in determining the organized conduct of the hearing. The final draft of the workplan will be reviewed and approved by the Panel presiding at the hearing.

HEARING

[20] Subject to the *proviso* below, with respect to the seventh day of the hearing, the Tribunal has set a seven-day hearing to be conducted as a Video Hearing commencing at **10 a.m. on Monday, February 8, 2021** continuing to the **Friday, February 12, 2021**, and then resuming again on **Tuesday, February 16** and **Wednesday, February 17, 2021** (as February 15, 2021 is Family Day).

- (a) Parties are to participate with video and audio enabled and to join the event from a computer, tablet or smartphone **by using this link:**
<https://global.gotomeeting.com/join/498569477>. When prompted, enter the **code 498-569-477** to be connected to the hearing by video.
- (b) Observers are to participate with audio only enabled. Join the event via telephone conference **by calling: (Toll Free): 1 888 299 1889 or**

1 (647) 497-9373. When prompted, **enter the code 498-569-477** to be connected to the call.

- (c) Individuals are directed to connect to the hearing event on the assigned dates 15 minutes before the commencement time in order to organize the hearing and conduct audio and video tests. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the call may be directed to the Tribunal's Case Coordinator having carriage of this case.
- (d) There will be no further notice with respect to the hearing.

[21] The Panel Member is not seized.

ADDITIONAL HEARING DAY SET ASIDE FOR PL190539 APPEAL

[22] The Parties advised the Tribunal, that they estimated that the total length of the hearing would be six (6) days. In order to avoid any potential delay in the scheduling of the hearing of these Appeals and based upon the submissions of the Parties that the total length of the hearing of the PL190539 Appeal, as a Bill 139 hearing, would not exceed one day, the Tribunal added one additional day to be available for scheduling. In the event the Panel hearing the Intended Motion should make a determination that the hearing of the PL190539 Appeal should be heard together with, and immediately following these Appeals, the seventh hearing day may then be utilized for that purpose. The Tribunal will then reassign that seventh hearing day to the other Tribunal File. In the event the Intended Motion is unsuccessful and no such direction is given, the seventh hearing day may be removed from the Tribunal's calendar.

[23] To be clear, the Tribunal has, in this case, only for the purposes of efficiency and expediency in the hearing of the appeals in both matters, tentatively set aside the

additional hearing day, and the Panel Member presiding at the CMC in the PL190539 Appeal, in hearing the Motion in both Tribunal Files, shall not be fettered in any respect on the merits of the Intended Motion.

[24] So orders the Tribunal.

“David L. Lanthier”

DAVID L. LANTHIER
VICE-CHAIR

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

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ATTACHMENT 1

LOCAL PLANNING APPEAL TRIBUNAL

Tribunal d'appel de l'aménagement local

ISSUE DATE:

CASE NO(S): PL190517

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

Applicant: PM (600 James St N) Inc.
Appellant: J & B Developments LP
Subject: Request to amend the Official Plan – Refusal of the City of Hamilton to adopt the requested amendment

Property Address/Description: 600 James Street North, Hamilton
Municipality: City of Hamilton
Municipal File No.: UHOPA-18-0008
LPAT Case No.: PL190517
LPAT File No.: PL190517
LPAT Case Name (*specify*): J & B Developments LP v. Hamilton (City)

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

Applicant: PM (600 James St N) Inc.
Appellant: J & B Developments LP
Subject: Request to amend Zoning By-law – Refusal of the City of Hamilton to pass the requested amending by-law

Property Address/Description: 600 James Street North, Hamilton
Municipality: City of Hamilton
Municipal File No.: ZAC-18-024
LPAT Case No.: PL190517
LPAT File No.: PL190518
LPAT Case Name (*specify*): J & B Developments LP v. Hamilton (City)

PROCEDURAL ORDER

Persons not represented by a lawyer, should prepare for the Video Hearing by reviewing the appropriate Appeal Guide, the Tribunal's Video Hearings Guide as provided for herein, and the Tribunal's Rules of Practice and Procedure ("Rules"), particularly Rule 20, which are available on the Tribunal's website at (<https://olt.gov.on.ca/tribunals/lpat/>).

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 video hearing will begin on **February 8, 2021 at 10:00 a.m.**
3. The parties' initial estimation for the length of the hearing is 7 days. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.
4. The parties and participants identified at the case management conference are set out in **Attachment 1** (see the sample procedural order for the meaning of these terms).
5. The issues are set out in the Issues List attached as **Attachment 2**. 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 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 intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. 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

9. 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 **December 15, 2020** and in accordance with paragraph 22 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 prepared to be qualified.
10. Expert witnesses in the same field shall have a meeting on or before **December 24, 2020** and use best efforts to try to resolve or reduce the issues for the hearing. Following the

experts' meeting the parties must prepare and file a Statement of Agreed Facts and Issues with the LPAT case co-ordinator on or before **January 22, 2021**.

11. 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 paragraph 13 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.
12. 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 13 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 13 below.
13. On or before **December 31, 2020**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the LPAT case co-ordinator and in accordance with paragraph 22 below.
14. On or before **December 31, 2020**, a participant shall provide copies of their written participant statement to the other parties in accordance with paragraph 22 below. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
15. On or before **February 1, 2021**, the parties shall provide copies of their visual evidence to all of the other parties in accordance with section 22 below. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. Parties may provide to all other parties and the LPAT case co-ordinator a written response to any written evidence on or before **January 14, 2021** in accordance with section 22 below.
17. The parties shall cooperate to prepare a joint document book which shall be uploaded to the LPAT's file share server, pursuant to the directions provided by the LPAT case co-ordinator, on or before **January 29, 2021**.
18. Any documents which may be used by a party in cross examination of an opposing party's witness shall be uploaded to the LPAT's file share server, pursuant to the directions provided by the LPAT case co-ordinator, on or before **February 5, 2021**. Such documents shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing.
19. 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.*

20. 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.
21. The parties shall prepare and file a preliminary hearing plan with the Tribunal on or before **January 15, 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.
22. All filing shall be electronic and in hard copy. Electronic copies may be 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.
23. 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.

This Member is [not] seized.

So orders the Tribunal.

ATTACHMENT 1 – Parties & Participants

Parties	Counsel	Contact
J & B Developments LP	Denise Baker	WeirFoulds LLP 10 – 1525 Cornwall Road Oakville, ON L6J 0B2 416-947-5090 dbaker@weirfoulds.com
City of Hamilton	Brian Duxbury	Duxbury Law 1 King Street West, Suite 500 Hamilton, Ontario L8P 1A4 905-570-1242 brian@duxburylaw.ca
Harbour West Neighbours Inc.	Herman Turkstra	500 Bay Street North Hamilton Ontario Canada L8L 1N5 905-977-0567 hturkstra@fastmail.fm

Participants	Address and Contact Information
Elizabeth A. Poynter	Elizabeth A. Poynter 18 Burlington Street East Hamilton, Ontario L8L 4G2 905-521-2754 eapoynter51@gmail.com
Tracy Geddes	2 Guise Street East, Hamilton, Ontario L8L 8C5 905-528-9717 guisesthousing@bellnet.ca
Carlos and Amelia Catarino	17 Burlington Street East Hamilton, Ontario L8L 4G1 905-689-6938 ccatarino@cogeco.ca

Susan Tesluk	2 Guise Street East, Hamilton, Ontario L8L 8C5 905-928-3130 susantesluk58@icloud.com
Barbara Johnston	2 Guise Street East, Unit #602 Hamilton, Ontario L8L 8C5 289-659-9660 sukigirl8@gmail.com
Amy Rolfe	2 Guise Street East, Unit #307 Hamilton, Ontario L8L 8C5 647-460-0896 arolfe@smartcentres.com
Joanne St. Amand	2 Guise Street East, Hamilton, Ontario L8L 8C5 905-510-4987 jo-st.amand@hotmail.com
Kevin Abbott	2 Guise Street East, Unit 409 Hamilton, Ontario L8L 8C5 905-973-7250 scrmix@yahoo.ca
Tony Blanken	Tony Blanken 24 Burlington St. East Hamilton, Ontario L8L 4G2 905-527-7297
Joanne Lederer	541 Hughson Street North Hamilton, Ontario L8L 4P1
Wade Hicken	15 Burlington Street East Hamilton, ON 905-580-9599 cw.hicken@gmail.com
John Price	14 Burlington St. East Hamilton, Ontario L8L 4G2 Phone: 289-689-9308 Email: j.c.p.1974@hotmail.com

ATTACHMENT 2 – 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 for the determination of the Tribunal at the hearing. The extent to which the issues are appropriate or relevant to the determination at the hearing will be matter of evidence and argument at the hearing.

City of Hamilton

1. Are the proposed amendments consistent with the Provincial Policy Statement, 2020, specifically policies 1.1.1. b) and f); 1.1.3.2; 1.1.3.3; 1.1.3.4; 1.1.3.5; 1.2.4 b) and d); 1.2.5; 1.2.6.1; 1.4.3 b) 2) and e); 1.6.8.3; 1.7.1e); 2.6.1; 2.6.2; 3.2.2?
2. Do the proposed amendments conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, specifically policies 1.2.1 Bullets 1 and 6; 2.2.1.2a) ii) and iii) and c) ii) through iv); 2.2.1.4a), c), and d) i); 2.2.2.3 a) and b); 5.2.5.3 c) and d); 5.2.5.5 b) through d); 5.2.5.6?
3. Do the proposed amendments conform with the relevant Official Plans and Secondary Plans including the Hamilton Wentworth Official Plan, the City of Hamilton Official Plan and West Harbour (Setting Sail) Secondary Plan (OPA No. 198), specifically policies C.7.2 and C.7.3. iii), v), ix) and xii)?
4. Do the proposed amendments conform with the relevant urban design policies for this portion of James Street North?
5. Do the proposed amendments serve to implement or do they conflict with the recommendations of the James Street North Mobility Hub Study, specifically policies 3.2.4; 3.2.5; 3.2.6; 3.2.7; 3.3; 3.4.1; 3.4.2 Focus Area A – James Street North to the Waterfront; 3.4.2.1; 3.4.2.2 Opportunity Sites (1 and 2)?
6. Should amendments proposing significant variations to the building heights permitted in the West Harbour (Setting Sail) Secondary Plan (OPA No. 198) and recommended by the James Street North Mobility Hub Study be allowed to proceed independently of a planning process incorporating the results of the Mobility Hub Study into the official plan, specifically policies A.6.3.2.2 i) iii) and iv); A.6.3.2.7 i); A.6.3.3.1.2; A.6.3.3.1.3; A.6.3.3.1.4; A.6.3.3.1.5; A.6.3.3.1.9; A.6.3.3.1.18 i) to vii) and ix) to xii); A.6.3.3.2.4 i) h); A.6.3.3.4.1 a) to v); A.6.3.3.4.2; A.6.3.3.4.5; A.6.3.4.2.1; A.6.3.4.5.13; A.6.3.6.1.4; A.6.3.6.5.1; A.6.3.6.5.2; A.6.3.7.1.1 through A.6.3.7.1.5; A.6.3.8.6; and Schedule M-1; M-2; M-4; M-5?
7. Would the proposed amendments result in over intensification of the site?

8. Would the proposed amendments result in a development that is not compatible with the neighbourhood and/or be out of scale with the neighbourhood in terms of massing, bulk, scale, siting, setbacks and spacing having regard to the site and the character of the surrounding lands?
9. Would the proposed amendments result in an adverse impact upon adjacent properties through lack of transition in height, built form, set back, shadow impact and overlook?
10. Does the proposed re-zoning result in sufficient amenity space?
11. Does the proposed re-zoning result in parking and loading deficiencies or parking systems that are not appropriate for this location including the proposed use of a parking stacker system, the reduction of on-site parking for residential units, the elimination of parking for the commercial units and the use of off-site or street parking to accommodate parking demand – have the parking and traffic issues been adequately reviewed and researched for this proposal?
12. How can requirements for an updated noise study and implementation of noise mitigation measures associated with the parking stacker system and the mechanical systems be secured at the site plan approval stage? Can noise issues be addressed as part of the site plan approval process?
13. Does the proposed development represent good land use planning and is it in the public interest?

ATTACHMENT 3- ORDER OF EVIDENCE

1. J & B Developments LP
2. City of Hamilton
3. Harbour West Neighbours Inc.
4. J & B Developments LP in reply

Attachment to Sample Procedural Order

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.*