

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



ISSUE DATE: February 16, 2021

CASE NO(S): PL200274

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

Applicant and Appellant:	LIV Developments Ltd.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	Neighbourhoods
Proposed Designated:	Site-specific – To be determined
Purpose:	To permit the development of 123 stacked Townhouses with a reduction in minimum density requirements
Property Address/Description:	157 Parkside Drive
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-17-006
LPAT Case No.:	PL200274
LPAT File No.:	PL200274
LPAT Case Name:	LIV Developments Ltd. 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:	LIV Developments Ltd.
Subject:	Application to amend Zoning By-law No. 05-200 and 90-145-Z - Neglect of City of Hamilton to make a decision
Existing Zoning:	Agriculture (A)
Proposed Zoning:	Medium Density Residential (R6), Modified and Conservation / Hazard Land (P5) Zone
Purpose:	To permit the development of 123 stacked Townhouses with a reduction in minimum

Property Address/Description:	density requirements 157 Parkside Drive
Municipality:	City of Hamilton
Municipality File No.:	ZAC-17-016
LPAT Case No.:	PL200274
LPAT File No.:	PL200275

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	LIV Developments Ltd.
Subject:	Site Plan
Property Address/Description:	157 Parkside Drive
Municipality:	City of Hamilton
LPAT Case No.:	PL200274
LPAT File No.:	PL210079

Heard: January 29, 2021 by telephone conference call

APPEARANCES:

Parties

LIV Developments Ltd.
City of Hamilton

Counsel

R. Cheeseman
P. MacDonald

MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON JANUARY 29, 2021 AND ORDER OF THE TRIBUNAL

[1] LIV Developments Ltd. (“Appellant”) has filed appeals regarding the failure of the City of Hamilton (“City”) to make decisions on the Appellant’s applications for official plan and zoning by-law amendments and for site plan approval to facilitate a proposed development at 157 Parkside Drive.

[2] On January 29, 2021, the Tribunal held the second Case Management Conference (“CMC”) in these matters at which it consolidated the official plan

amendment, zoning by-law amendment and site plan approval proceedings, reviewed a draft Procedural Order and Issues List, and set hearing dates.

[3] The Parties requested on consent that the site plan approval proceeding should be consolidated with the official plan amendment and zoning by-law amendment appeal proceedings. The Tribunal found that the Parties in all three proceedings are the same, the appeals all address the same proposed development, and consolidation of the three proceedings would be an efficient means for adjudicating these matters. The Tribunal ordered that the proceedings are consolidated.

[4] The Parties requested that a 10-day hearing be scheduled for the adjudication of the three appeals. The Tribunal set hearing dates in September 2021 and directed that the Parties update the draft Procedural Order and Issues List. This was subsequently done and the documents were filed with the Tribunal. The Tribunal has now reviewed the updated documents and approves them.

[5] The Parties stated that they will undertake settlement discussions but advised that Tribunal-assisted mediation is not needed at this time. The Tribunal encouraged the Parties to pursue these discussions and to contact the Tribunal should the need for Tribunal-assisted mediation arise.

ORDER

[6] The Tribunal orders that the official plan and zoning by-law amendment appeals in Tribunal Case No. PL200274 and the site plan approval appeal in Tribunal Case No. PL210079 are consolidated.

[7] The Tribunal approves the Procedural Order and Issues List attached as Schedule 1 to this Order and Decision.

[8] The Tribunal orders that the hearing of the appeals will commence by video hearing on **Monday, September 27, 2021 commencing at 10 a.m.** Ten days have been set aside for the hearing.

[9] Parties and Participants are asked to log into the video hearing at least **15 minutes** before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/855701845>

Access code: 855-701-845

[10] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](https://app.gotomeeting.com/home.html) a web application is available:

<https://app.gotomeeting.com/home.html>

[11] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **Toll-Free [1 888 299 1889](tel:18882991889) or [1 \(647\) 497 9373](tel:16474979373)**. The **access code is 855-701-845**.

[12] Individuals are directed to connect to the event on the assigned date at the correct time. 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 hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[13] There will be no further notice.

[14] This Member is not seized.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

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

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

SCHEDULE 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:	LIV Developments Ltd.
Subject:	Request to amend the Official Plan –Failure of the City of Hamilton to adopt the requested amendment “Neighbourhoods”
Existing Designation:	Site Specific – to be determined
Proposed Designation:	To permit the development of 123 stacked townhouses with a reduction in minimum density requirements
Purpose:	157 Parkside Drive
Property Address/Description:	City of Hamilton
Municipality:	UHOPA-17-006
Municipality File No.:	PL200274
LPAT Case No.:	PL200274
LPAT File No.:	LIV Developments Ltd. v. Hamilton (City)
LPAT Case Name:	

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

Applicant and Appellant:	LIV Developments Ltd.
Subject:	Application to amend Zoning By-law No. 05-200 and 90-145-Z –Neglect of the City of Hamilton to make a decision
Existing Zoning:	Agriculture
Proposed Zoning:	Medium Density Residential (R6), Modified and Conservation/Hazard Land (P5) Zone
Purpose:	To permit the development of 123 stacked townhouses with a reduction in minimum density requirements
Property Address/Description:	157 Parkside Drive
Municipality:	City of Hamilton
Municipality File No.:	ZAC-17-016
LPAT Case No.:	PL200274
LPAT File No.:	PL200275

PROCEEDING COMMENCED UNDER subsection 41(12) of the Planning Act,
R.S.O. 1990, c. P. 13, as amended

Referred by:	LIV Developments Ltd.
Subject:	Site Plan
Property Address/Description:	157 Parkside Drive
Municipality:	City of Hamilton
LPAT Case No.:	PL200274
LPAT File No.:	PL 210079

PROCEDURAL ORDER

The Tribunal orders that:

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

Organization of the Hearing

[2] The video hearing will commence on Monday, September 27, 2021, at 10:00 a.m.

[3] The length of the hearing will be 10 days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.

[4] The parties and participants identified at the case management conference are listed in Attachment 1 to this Order.

[5] The Issues are set out in the Issues List attached as Attachment 2 to this Order. There will be no changes to this list unless the Tribunal permits it. A party who asks for changes may have costs awarded against it.

[6] The order of evidence shall be as listed 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 consent or by Order of the Tribunal.

Requirements Before the Hearing

[7] All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Tribunal. Any such person who retains a representative (legal counsel or agent) subsequent to the case management conference must advise the other parties and the Tribunal of the representative's name, mailing address, email address and phone number.

[8] A party who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Visual 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, 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 Monday, June 28, 2021. 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 before the hearing 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 on or before Friday, July 30, 2021 and provide this list to all of the parties and the LPAT case co-ordinator.

[11] 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 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.

[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 and his or her area of expertise, as in section [13]. 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 15 below.

[13] On or before Friday, August 20, 2021, the parties shall provide copies of their witness and expert witness statements to the other parties and the LPAT case co-ordinator.

[14] On or before Friday, August 20, 2021, a participant shall provide copies of their written participant statement to the other parties. 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 Friday, September 10, 2021, the parties shall provide copies of their visual evidence to all of the other parties and the Tribunal. If a model is proposed to be used the Tribunal must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.

[16] Parties may provide to all other parties and the Tribunal a written response to any written evidence on or before Friday, September 10, 2021.

[17] The parties shall cooperate to prepare a joint document book which shall be shared with the LPAT case co-ordinator on or before Monday, September 20, 2021.

[18] Any documents which may be used by a party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing, pursuant to the directions provided by the LPAT case co-ordinator, on or before Monday, September 20, 2021.

[19] A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunal Rule 10.

[20] 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.

[21] The parties shall prepare and file a preliminary hearing plan with the Tribunal on or before Monday, September 20, 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 filings 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 by email shall be governed by the Tribunal Rule 7 on this subject.

[23] No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 apply to such requests.

This Member is not seized.

So orders the Tribunal.

Attachment 1

PARTIES

1. LIV Developments Ltd.
2. City of Hamilton

PARTICIPANTS

Attachment 2

Issues List

OPA and ZBA

Planning

1. Does the proposal comply with policies 2.2.1, 2.2.2 and 2.2.6 in the Provincial Policy Statement?
2. Does the proposal comply with A Place to Grow: Growth Plan for the Greater Golden Horseshoe Policies 2.2.1, 2.2.2 and 2.2.6?
3. Would the approval of the proposed OPA and Zoning By-law Amendment conform to the UHOP and the North Waterdown Secondary Plan?
4. Is the proposed Zoning By-law Amendment(s) premature without an appropriate holding provision?
5. Is it good planning and appropriate to reduce the density identified in the Waterdown North Secondary Plan B.4.2.4.7(c)?
6. Does the proposed development comply with policy E.3.6.7(d) in terms of providing landscaping, parking for the residential development, amenity areas for the proposal and pedestrian facilities while reducing the conflicts between pedestrian and vehicle traffic?
7. Does the proposal meet the intent of policy F.1.1.5 in the City of Hamilton Official Plan?
8. Does the proposal comply with policy B.4.2.4.2 (b) in the North Waterdown Secondary Plan in terms of providing a broad range of housing within the North Waterdown Secondary Plan Area?
9. Does the proposed development represent good land use planning and is in the public interest?

Natural Heritage

10. Does the proposal satisfy the requirements to protect and enhance the natural heritage feature(s) abutting the property as per the natural heritage policies in the Urban Hamilton Official Plan, Waterdown North Secondary Plan and Provincial policy documents?

Engineering

11. Does the proposal satisfy all requirements and comments identified by Development Approvals including but not limited to grading, stormwater management and servicing?
12. Is there sufficient sanitary sewer capacity for the development that would be permitted by the zoning by-law amendment and the OPA?
13. Is there sufficient water service capacity for the development permitted by the zoning by-law amendment and the OPA?
14. Can storm water quality and quantity be appropriately managed by the development permitted by the zoning by-law amendment and OPA?
15. Does the functional servicing report submitted by the applicant adequately address issues 11-14?

Traffic/Transportation

16. Is the proposal premature without a holding provision until North Waterdown Drive is constructed and operational?
17. Does the proposal satisfactorily implement mitigation measures or improvements as required to deal with traffic impacts and has the appellant ensured that the mitigation measures or improvements related to traffic impacts will be undertaken at its cost, including but not limited to: signalization, driveway access to municipal roads, site layout including internal roads, building envelopes, vehicle maneuverability, and pedestrian facilities?

SITE PLAN

18. Is the appellant's site plan application premature, pending the outcome of its appeals for an official plan amendment and zoning by-law amendment?
19. Does the site plan application proposed by the appellant require any modifications to satisfy the City's plans, by-laws, and guidelines, including but not limited to the Urban Hamilton Official Plan, the City's Site Plan Guidelines, Engineering Guidelines, applicable comments received to date from City departments and the implementing official plan and zoning by-law amendments proposed by the appellant that is under appeal?
20. If approved, what are the appropriate conditions of site plan approval?

Attachment 3

ORDER OF EVIDENCE

1. LIV Developments Ltd.
2. City of Hamilton
3. LIV Developments Ltd., in Reply