

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 02, 2021

CASE NO(S): PL200456

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

Applicant and Appellant:	Sanders Garden Inc.
Subject:	Request to amend the Official Plan - Failure of City of Hamilton to adopt the requested amendment
Purpose:	To permit a mixed-use 9-storey development
Property Address/Description:	69 Sanders Boulevard & 1630 Main Street West
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-18-014
LPAT Case No.:	PL200456
LPAT File No.:	PL200456
LPAT Case Name:	Sanders Garden Inc. vs. Hamilton (City)

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

Applicant and Appellant:	Sanders Garden Inc.
Subject:	Application to amend Zoning By-law No. ZAC-18-035 - Neglect of the City of Hamilton to make a decision
Existing Zoning:	"H" (Community Shopping and Commercial; Etc.) and Community Institutional (I2), Exception: 17, 20
Proposed Zoning:	Site specific "E-3" (High Density Multiple Dwellings).
Purpose:	To permit a mixed-use 9-storey development
Property Address/Description:	69 Sanders Boulevard & 1630 Main Street West
Municipality:	City of Hamilton
Municipality File No.:	ZAC-18-035
LPAT Case No.:	PL200456
LPAT File No.:	PL200457

Heard: June 28, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Sanders Garden Inc.

R. Cheeseman

City of Hamilton

P. MacDonald

MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON JUNE 28, 2021 AND ORDER OF THE TRIBUNAL

[1] Sanders Garden Inc. (“Appellant”) appealed the failure of the City of Hamilton to adopt an Official Plan Amendment proposed by the Appellant and to make a decision with respect to the Appellant’s application for a zoning by-law amendment regarding the property located at 69 Sanders Boulevard and 1630 Main Street West.

[2] On June 28, 2021, the Tribunal held a Case Management Conference (“CMC”) at which it considered a draft Procedural Order and Issues List that had been filed by the Parties, discussed opportunities for settlement discussions, and scheduled hearing dates.

[3] At the CMC, the Parties discussed the proposed draft Procedural Order and Issues List, described the witnesses that they intend to call at the hearing, and requested that a five-day hearing be scheduled. They stated that they are continuing settlement discussions. Neither Party believed that this is an appropriate case for mediation.

[4] The Tribunal scheduled a five-day hearing for early January 2022.

[5] Subsequent to the CMC, on June 29, 2021, the Parties filed a finalized draft Procedural Order and Issues List with the Tribunal. The Tribunal has reviewed and approves the draft Procedural Order and Issues List.

ORDER

[6] The Tribunal approves the draft Procedural Order and Issues List appended as Schedule 1 to this Order and Decision.

[7] The Tribunal orders that the hearing of the appeal will commence by video hearing on **Monday, January 10, 2022 at 10 a.m. Five days** have been set aside for the hearing.

[8] 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/970857349>

Access code: 970-857-349

[9] 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](#) or a web application is available:

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

[10] 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): (Toll Free): [1 888 299 1889](tel:18882991889) or [+1 \(647\) 497-9373](tel:+16474979373). The access code is 970-857-349.

[11] 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.

[12] There will be no further notice.

[13] This Member is not seized.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

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

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal.

SCHEDULE 1



Ontario Land Tribunal

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5
Tel: 416-212-6349 | 1-866-448-2248
Web Site: olt.gov.on.ca

Procedural Order for Video Hearings

ISSUE DATE:

CASE NO(S): PL200456

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

Applicant and Appellant: Sanders Garden Inc.
Subject: Request to amend the Official Plan –Failure of the City of Hamilton to adopt the requested amendment

Purpose: To permit a mixed-use 9-storey development
Property Address/Description: 69 Sanders Boulevard & 1630 Main Street West
Municipality: City of Hamilton
Municipality File No.: UHOPA-18-014
LPAT Case No.: PL200456
LPAT File No.: PL200456
LPAT Case Name: Sanders Garden 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: Sanders Garden Inc.
Subject: Application to amend Zoning By-law No. ZAC-18-035 –Neglect of the City of Hamilton to make a decision “H” (Community Shopping and Commercial, Etc.) and Community Institutional (I2), Exception: 17,20
Existing Zoning: “H” (Community Shopping and Commercial, Etc.) and Community Institutional (I2), Exception: 17,20
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LPAT Case No.: PL200456
LPAT File No.: PL200457

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 Monday, January 10, 2022, at 10:00 a.m. by Videoconference.

3. The parties' initial estimation for the length of the hearing is 5 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.
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.

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 September 3, 2021 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 Friday, October 1, 2021 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 Friday, October 1, 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 Friday, November 12, 2021, 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 Friday, November 12, 2021, 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 Thursday, December 23, 2021, the parties shall provide copies of their visual evidence to all of the other parties in accordance with paragraph 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 OLT case co-ordinator a written response to any written evidence on or before December 3, 2021 and in accordance with paragraph 22 below.
- 17.** The parties shall cooperate to prepare a joint document book which shall be shared with the OLT case co-ordinator on or before December 23, 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 OLT case co-ordinator, on or before January 3, 2022.
- 19.** A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.
- 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 Thursday, December 23, 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 submitted electronically 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 *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.

BEFORE:

Name of Member:

Date:

TRIBUNAL REGISTRAR

Attachment 1

PARTIES

1. Sanders Garden Inc.
2. City of Hamilton

Attachment 2

Issues List

1. Does the proposal comply with the policies of the Urban Hamilton Official Plan including but not limited to policies E.2.4 related to Urban Corridors and E.4.0 related to the Mixed Use – Medium Density Designation?
2. Does the proposal meet the residential intensification policies of the Urban Hamilton Official Plan, including policies B.2.4.1.4 and B.2.4.2.2?
3. Does the proposed development maintain or enhance the character of the area or neighbourhood?
4. Is the proposed height, scale, massing and arrangement of buildings and structures compatible with the existing and future uses in the surrounding area?
5. Does the proposed development respect the existing built form of adjacent neighbourhoods by providing appropriate setbacks and stepbacks, gradation in building height, building mass, and densities by locating and designing the development to provide adequate light access, minimize the effects of shadowing and overview on properties in adjacent neighbourhoods?
6. Is the subject proposal compatible with the surrounding existing uses?
7. Does the proposal comply with the Mixed Use – Medium Density and Mixed Use – Medium Density – Pedestrian Focus policies of the Ainslie Wood Westdale Secondary Plan, including but not limited to policies B.6.2.7.2 b), d), and e)?
8. Does the proposal comply with the urban design policies of the Ainslie Wood Westdale Secondary Plan, including but not limited to B.6.2.13.1 b) and B.6.2.13.2 c) as it relates to the proposed nine storey building with a density of 385 units per gross hectare?
9. Does the proposal have any adverse impacts on the surrounding existing development with respect to overlook, privacy, buffering between neighbouring land uses and, traffic, and if so, have those impacts been appropriately mitigated?
10. Are the proposed site specific performance standards compatible and in keeping with the intent of the Zoning By-law?
11. What, if any, holding provisions are appropriate for the development?"
12. Does the proposed development represent good land use planning and is in the public interest?

Attachment 3

ORDER OF EVIDENCE

1. Sanders Garden Inc.
2. City of Hamilton
3. Sanders Garden Inc., in Reply