

Barristers & Solicitors

**WeirFoulds**LLP

November 20, 2017

Ms. Rose Caterini  
City Clerk  
City of Hamilton  
71 Main St. W., 1st Floor  
Hamilton, ON  
L8P 4Y5

<b>OFFICE OF THE CITY CLERK</b>	
NOV 20 2017	
REF'D TO	_____
REF'D TO	_____
REF'D TO	_____
ACTION	_____
_____	

Denise Baker  
Partner  
T: 905-829-8600  
dbaker@weirfoulds.com

File 99999.99904

Dear Ms. Caterini:

**Re: Appeal to the Ontario Municipal Board  
Subsection 34(11) of the *Planning Act*, R.S.O., P.13, as amended  
Zoning By-law Amendment Application ZAR-17-10  
952-954 Concession Street, Hamilton**

We are counsel to Sammani 786 Inc. ("**Sammani**"), who is the owner of the property municipally known as 952 – 954 Concession Street (the "**Site**") in the City of Hamilton ("**City**"), with respect to their Zoning By-law Amendment application.

Through its planning consultant, IBI Group, Sammani filed an application to amend the City's Zoning By-law, together with all of the required studies and supporting documentation. The application was declared complete as of January 9, 2017. At the Planning Committee meeting, held on November 14, 2017, staff recommended approval of the application, as set out in Report No. PED17193, however despite staff's recommendation, the Planning Committee decided to recommend refusal of the application to City Council. To date, City Council has failed to make a decision on the proposed Zoning By-law amendment.

Accordingly, on behalf of our clients we hereby appeal the proposed Zoning By-law amendment to the Ontario Municipal Board (the "**Board**") pursuant to the *Planning Act*, R.S.O. 1990, c. P.13, as amended on the basis that they have failed to make a decision within 120 days of the application being deemed complete.

**THE SITE**

The Site is located on the south side of Concession Street and west of Upper Gage Avenue. The Site is rectangular in shape and represents a corner lot condition with 28 metres of frontage on Concession Street and 30 metres of frontage on Upper Gage Avenue. The Site consists of an existing one storey commercial building of approximately 385 square metres in size,

Suite 10, 1525 Cornwall Road, Oakville, Ontario, Canada. L6J 0B2	T: 905-829-8600 F: 905-829-2035
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containing four separate commercial units. The Site contains 15 parking spaces, primary road access to Concession Street and secondary access from Upper Gage Avenue via a public ally located immediately to the south of the Site.

#### **THE APPLICATION**

The purpose of the application is to amend the City's Zoning By-law No. 6593 to permit an Animal Hospital on the ground floor of the existing commercial building, and to permit three residential units within a proposed second storey addition. The amendment proposes to rezone the Site from the existing "G-3" (Public Parking Lots) District, and the existing "G-4/S-1214a" (Designed Neighbourhood Shopping Area) District, Modified to "G-4/S-1214b" (Designed Neighbourhood Shopping Area) District, Modified, for the entirety of the Site. A number of site specific modifications to the rezoning are proposed to implement the development.

#### **ZONING AMENDMENT APPEAL**

While reasons for an appeal from a non-decision are not required, we note the following in support of our client's appeal of their Zoning By-law Amendment application:

1. As noted above, the City declared the application complete under the *Planning Act* as of January 9, 2016. However, City Council has failed to adopt the requested amendment within the requisite timeframe.
2. The proposal is consistent and conforms to the applicable planning policy framework as noted below:
  - (a) The Provincial Policy Statement (2014), by providing an appropriate range and mix of residential and employment uses;
  - (b) The Provincial Growth Plan for the Greater Golden Horseshoe (2017), by supporting the achievement of complete communities that are designed to support healthy and active living and meeting people's need for daily living throughout an entire lifetime. The residential component also supports a range and mix of housing options to serve all sizes, incomes and ages of households. Finally, the application provides intensification within a built-up area and utilizing existing infrastructure, including transit.
  - (c) Urban Hamilton Official Plan, by proposing a veterinary clinic and residential uses, which are permitted uses within the Local Commercial designation. It also satisfies

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the built form policy for multiple storey buildings to be designed with local commercial uses on the ground floor and residential units above. It proposes that the location of the primary public entrance to the veterinary clinic be from Concession Street, which satisfies the policy that primary entrances to commercial space be through the principal façade of the building. Further streetscape improvements are proposed through façade treatment and fenestration along the street frontage. It is also a permitted form of residential intensification within the built-up area, which supports the achievement of the 40% residential and employment intensification target within Neighbourhoods. The proposal contributes to achieving a range of dwelling types, while the built form is of an appropriate scale which maintains a relationship with the existing neighbourhood character.

- (d) From both a land use and urban design standpoint, the proposal is compatible with and sensitive to the surrounding neighbourhood, in terms of the proposed height, built form, and other urban design features. The proposed residential units are a complementary addition to the existing commercial use of the Site.
- (e) The proposed redevelopment facilitates an appropriate form of land development and represents good land use planning.
- (f) From a land use planning perspective, the proposed redevelopment of the Site promotes the achievement of numerous policy directives supporting intensification within built-up urban area, particularly in locations that are well served by municipal infrastructure, including public transit. The proposed redevelopment would result in a desirable mixed use development that supports the achievement of complete communities.
- (g) Such further and other reasons as counsel may advise and the Board may permit.

In satisfaction of the Board's filing requirements, attached please find attached the following:

1. Board appeal form entitled "Appellant Form (A1)" duly completed and signed; and
2. One cheque, in the amount of \$300.00, payable to the Minister of Finance representing the Board's filing fee for the appeal herein.

In the interim, kindly acknowledge the receipt of this letter and advise that the appeal has been forwarded to the Board in accordance with the provisions of the *Planning Act*.

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Thank you for your attention to this matter. We trust that the enclosed material and the above information are sufficient for the acceptance of the appeal at this time. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours truly,

**WeirFoulds LLP**



Denise Baker

DB/sv  
Encs.

cc Client

11099802.1



Environment and Land Tribunals Ontario  
**Ontario Municipal Board**  
 655 Bay Street, Suite 1500  
 Toronto ON M5G 1E5  
 Telephone: 416-212-6349  
 Toll Free: 1-866-448-2248  
 Fax: 416-326-5370  
 Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca)

**Appellant Form (A1)**

Receipt Number (OMB Office Use Only)

Date Stamp - Appeal Received by Municipality

**1. Appeal Type (Please check all applicable boxes) \***

Subject of Appeal	Type of Appeal	Act Reference (Section)
<b>Planning Act Matters</b>		
<b>Official Plan or Official Plan Amendment</b>	<input type="checkbox"/> Appeal a decision by local council that adopted an OP or OPA (exempt from approval by Minister or Approval Authority)	17(24)
	<input type="checkbox"/> Appeal a decision of an Approval Authority that approved or did not approve all or part of a plan or amendment	17(36)
	<input type="checkbox"/> Approval Authority failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Council failed to adopt the requested amendment within 180 days	22(7)
	<input type="checkbox"/> Council refused the requested amendment	22(7)
<b>Zoning By-law or Zoning By-law Amendment</b>	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input checked="" type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	34(11)
<b>Interim Control Zoning By-law</b>	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
<b>Minor Variance</b>	<input type="checkbox"/> Appeal a decision of the Committee of Adjustment that approved or refused the application	45(12)
<b>Consent/Severance</b>	<input type="checkbox"/> Appeal a decision that approved or refused the application	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Application for consent – Approval Authority failed to make a decision on the application within 90 days	53(14)
<b>Plan of Subdivision</b>	<input type="checkbox"/> Application for a plan of subdivision – Approval Authority failed to make a decision on the plan within 180 days	51(34)
	<input type="checkbox"/> Appeal a decision of an Approval Authority that <b>approved</b> a plan of subdivision	51(34)
	<input type="checkbox"/> Appeal a decision of an Approval Authority that did <b>not approve</b> a plan of subdivision	51(39)
	<input type="checkbox"/> Appeal a lapsing provision imposed by an Approval Authority	51(39)
	<input type="checkbox"/> Appeal conditions imposed by an Approval Authority	
	<input type="checkbox"/> Appeal conditions - after expiry of 20 day appeal period but before final approval (only applicant or public body may appeal)	51(43)
	<input type="checkbox"/> Appeal changed conditions	51(48)

Subject of Appeal	Type of Appeal	Act Reference (Section)
<b>Development Charges Act Matters</b>		
Development Charge	<input type="checkbox"/> Appeal a Development Charge By-law	14
	<input type="checkbox"/> Appeal an amendment to a Development Charge By-law	19(1)
Development Charge	<input type="checkbox"/> Appeal municipality's decision regarding a complaint	22(1)
	<input type="checkbox"/> Failed to make a decision on the complaint within 60 days	22(2)
Front-ending	<input type="checkbox"/> Objection to a front-ending agreement	47
	<input type="checkbox"/> Objection to an amendment to a front-ending agreement	50
<b>Education Act Matters</b>		
Education Development	<input type="checkbox"/> Appeal an Education Development Charge By-law	257.65
	<input type="checkbox"/> Appeal an amendment to an Education Development Charge By-law	257.74(1)
Education Development	<input type="checkbox"/> Appeal approval authority's decision regarding a complaint	257.87(1)
	<input type="checkbox"/> Failed to make a decision on the complaint within 60 days	257.87(2)
<b>Aggregate Resources Act Matters</b>		
Aggregate Removal	<input type="checkbox"/> One or more objections against an application for a 'Class A' aggregate removal licence	11(5)
	<input type="checkbox"/> One or more objections against an application for a 'Class B' aggregate removal licence	
	<input type="checkbox"/> Application for a 'Class A' licence – refused by Minister	11(11)
	<input type="checkbox"/> Application for a 'Class B' licence – refused by Minister	
	<input type="checkbox"/> Changes to conditions to a licence	13(6)
	<input type="checkbox"/> Amendment of site plans	16(8)
	<input type="checkbox"/> Minister proposes to transfer the licence – applicant does not have licensee's consent	
	<input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant is licensee or has licensee's consent to transfer	18(5)
	<input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant does not have licensee's consent to transfer	
<input type="checkbox"/> Revocation of licence	20(4)	
<b>Municipal Act Matters</b>		
Ward Boundary By-law	<input type="checkbox"/> Appeal the passing of a by-law to divide the municipality into wards	
	<input type="checkbox"/> Appeal the passing of a by-law to redivide the municipality into wards	222(4)
	<input type="checkbox"/> Appeal the passing of a by-law to dissolve the existing wards	
<b>Ontario Heritage Act Matters</b>		
Heritage	<input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation study area	40.1(4)
	<input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation district	41(4)
<b>Other Matters</b>		
Subject of Appeal	Act/Legislation Name	Section Number

**2. Location Information**

Address and/or Legal Description of property subject to the appeal \*  
952 - 954 Concession Street

Municipality \*  
City of Hamilton

Upper Tier (Example: county, district, region)

**3. Appellant/Objector Information**

**Note:** You must notify the OMB of any change of address or telephone number in writing. Please quote your OMB Case/File Number(s) after they have been assigned.

Last Name | First Name

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation) \*  
Sammani 786 Inc.

Professional Title

Email Address

Daytime Telephone Number * 519-771-1730	ext.	Alternate Telephone Number	Fax Number
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**Mailing Address**

Unit Number	Street Number * 70	Street Name * Paris Road	PO Box
City/Town * Brantford	Province * ON	Country * Canada	Postal Code * N3R 1H7

**4. Representative Information**

I hereby authorize the named company and/or individual(s) to represent me

Last Name | First Name  
Baker | Denise

Company Name  
WeirFoulds LLP

Professional Title  
Barrister and Solicitor

Email Address  
dbaker@weirfoulds.com

Daytime Telephone Number 416 947-5090	ext.	Alternate Telephone Number 905-829-8600	Fax Number 905-829-2035
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**Mailing Address**

Unit Number 10	Street Number 1525	Street Name Cornwall Road	PO Box
City/Town Oakville	Province ON	Country Canada	Postal Code L6J 0B2

**Note:** If you are representing the appellant and are **not** a solicitor, please confirm that you have written authorization, as required by the OMB's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

**5. Appeal Specific Information**

Municipal Reference Number(s)  
ZAR-17-010

Outline the nature of your appeal and the reasons for your appeal \*  
See attached correspondence

**Oral/written submissions to council**

Did you make your opinions regarding this matter known to council?

Oral submissions at a public meeting     Written submissions to council

**Planning Act matters only**

*Applicable only to official plans/amendments, zoning by-laws/amendments and minor variances that came into effect/were passed on or after July 1, 2016 (Bill 73)*

Is the 2-year no application restriction under section 22(2.2) or 34(10.0.0.2) or 45(1.4) applicable?

Yes     No

**6. Related Matters**

Are there other appeals not yet filed with the Municipality?

Yes     No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

Yes     No

**7. Scheduling Information**

How many days do you estimate are needed for hearing this appeal?

1 day     2 days     3 days     4 days     1 week

More than 1 week

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?  
Two

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.)  
Planner and Traffic/Parking

Do you believe this matter would benefit from mediation?

(Prior to scheduling a matter for mediation, the OMB will conduct an assessment to determine its suitability for mediation)

Yes     No



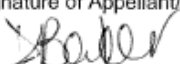
**8. Required Fee**

Total Fee Submitted \* \$ 300

Payment Method \*  Certified cheque  Money Order  Solicitor's general or trust account cheque

**9. Declaration**

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Denise Baker		2017/11/17

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.