



Patrick J. Harrington  
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February 1, 2022

VIA E-MAIL & COURIER

Our File No. 164511

City of Hamilton  
Office of the City Clerk  
City Hall  
71 Main St. W, 1<sup>st</sup> Floor  
Hamilton, ON L8P 4Y5

Attention: Andrea Holland, City Clerk  
Via email: [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

Dear Ms. Holland,

<b>Re:</b>	<b>Appeal:</b>	<b><i>Planning Act, s. 51(34)</i></b>
	<b>Property Address:</b>	<b>140 Garner Road East</b>
	<b>Municipality:</b>	<b>City of Hamilton</b>
	<b>Appellant(s):</b>	<b>ONE Properties Limited Partnership</b>
	<b>City File No.:</b>	<b>25T-201806</b>
	<b>Subject:</b>	<b>Draft Plan of Subdivision Application – Appeal of Council’s Non-Decision</b>

We are counsel to ONE Properties Limited Partnership (“ONE Properties”). On behalf of our client, our firm filed the attached appeal directly with the Ontario Land Tribunal on December 13, 2021. We subsequently determined that the appeal package was not copied to the City of Hamilton.

Please find enclosed the appeal as filed. As this appeal was originally sent directly to the Tribunal, our firm cheque in the amount of \$1,100, payable to the Minister of Finance, is already in the Tribunal’s possession.

We apologize for any confusion this may have caused. Please contact the undersigned if you have any questions.

Yours truly,

AIRD & BERLIS LLP

Patrick J. Harrington  
PJH/np

Encl.

- c. M. Johnston & S. Manchia, UrbanSolutions  
S. Savelli, ONE Properties Limited Partnership  
S. Robichaud, City of Hamilton  
M. Barrett, Aird and Berlis LLP



Patrick J. Harrington  
Direct: 416.865.3424  
E-mail: pharrington@airdberlis.com

December 13, 2021

VIA E-MAIL AND COURIER

Our File No. 164511

Ontario Lands Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON M5G 1E5

Dear Sir or Madame,

<b>Re:</b>	<b>Appeal:</b>	<b><i>Planning Act, s. 51(34)</i></b>
	<b>Property Address:</b>	<b>140 Garner Road East</b>
	<b>Municipality:</b>	<b>City of Hamilton</b>
	<b>Appellant(s):</b>	<b>ONE Properties Limited Partnership</b>
	<b>City File No.:</b>	<b>25T-201806</b>
	<b>Subject:</b>	<b>Draft Plan of Subdivision Application – Appeal of Council’s Non-Decision</b>

We are counsel to ONE Properties Limited Partnership (“ONE Properties”). Please accept this cover letter and the attached A1 Appeal form as our client’s appeal to the Ontario Land Tribunal (the “Tribunal”) on the basis of Council of the City of Hamilton’s (the “City”) failure to render a decision in respect of our client’s draft plan of subdivision application within the required statutory timeframe.

The site at issue is 35.27 hectares in size and is known municipally known as 140 Garner Road East in the former Town of Ancaster (the “Site”). The site is currently owned by Ontari Holdings Inc. on behalf of AIMCo Realty Investors LP. A predecessor in title filed a draft plan of subdivision application with the City in 2018. ONE Properties is now the proponent of this subdivision application on behalf of the site owner. The application proposes develop a prestige business park on the Site. The proposed business park would include 14 development blocks (providing for a range of employment and employment supportive uses), a storm water management block, a wetland open space block, and four roadways (the “Application”). The Application was deemed complete by the City on November 20, 2018.

**The Application Meets the Criteria under Subsection 51(24) of the *Planning Act***

The Application meets the criteria for approval of a draft plan of subdivision under subsection 51(24) of the *Planning Act*, by:

- addressing matters of provincial interest;
- implementing the employment policies in the City’s Official Plan;
- ensuring that all requirements have been met to confirm that the lands are suitable for the proposed development;
- ensuring the adequacy of the capacity of the proposed road network and connections to the existing transportation system

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- providing lots that range in size to accommodate a range of employment uses and buildings;
- addressing the conservation of natural resources and flood control through the preparation of a Stormwater Management Plan and Environmental Impact Study;
- ensuring that the Site is adequately serviced; and
- designing the Application to address energy efficiency and conservation.

#### **The Application is Consistent with the 2020 Provincial Policy Statement**

The Application supports the growth objectives in Policies 1.1.1, 1.1.3, 1.3.1 and 1.7.1 of the 2020 PPS by locating an employment development within an existing urban area in the City on a site designated for employment growth. The proposal would contribute to a range and mix of employment and ancillary uses to meet the long-term and annual employment needs of the City. Furthermore, the development proposed by the Application has been designed with appropriate buffers and setbacks from surrounding environmental features in order to ensure that adequate separation is provided.

The Application is also consistent with Policy 1.3.2 of the 2020 PPS, which requires planning authorities to protect employment areas in proximity to major goods movement corridors for employment uses that require those locations. The project ensures that the necessary infrastructure capacity is provided to support the development and provides for employment uses in close proximity to Highway 403, a major goods movement corridor. By supporting and optimizing the use of existing infrastructure, the Application is consistent with the transportation and servicing requirements in Policy 1.6 of the 2020 PPS.

With respect to the Natural Heritage Policies of the 2020 PPS (Policy 2.1), the Application provides for appropriate mitigation methods and strategies that will ensure that the natural heritage features in and around the Site will be enhanced.

#### **The Application Conforms to the 2020 Growth Plan for the Greater Golden Horseshoe**

The Application conforms with the 2020 Growth Plan by contributing to economic development and employment opportunities. The proposal provides development blocks of varying sizes that will accommodate new prestige business uses and stimulate economic growth around the Hamilton International Airport (the “Airport”), while at the same time requiring mitigation measures to enhance the natural heritage features and functions in and around the Site.

#### **The Application Conforms to the City’s Official Plan and the Airport Employment Growth District Secondary Plan**

The Site is within the City’s urban boundary and within a built up area. The Site is designated *Employment Areas* and *Airport Employment Growth District* in the Urban Hamilton Official Plan (“UHOP”).

The proposed development is expected to generate more than 1,000 employees (or 50 jobs per hectare), which will assist in achieving the City’s greenfield employment density target as set out in Policies A.2.3.2 and A.2.3.3 of the UHOP.

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Studies related to noise impacts, environmental assessments, a Stormwater Management Plan and Functional Servicing Report have been prepared to address Policies B.3.6.3.19.d), C.2.7.5, C.2.7.6 and Section C.5.4 of the UHOP.

With respect to Policy C.4.8.6, related to restrictions on land uses in the vicinity of the Airport, it has been determined that the proposed development will not pose a potential aviation hazard and would meet the requirements of the Noise Exposure Forecast as set out in the UHOP.

Finally, the Application conforms with the UHOP's policies and goals for employment areas in Sections E.2.6 and E.5.0 by permitting the development of a future business park that will accommodate a range of employment uses and jobs in proximity to the Airport, as well as Highway 403 and an existing bus transit route.

**Related Appeal under the Conservation Authorities Act**

On June 18, 2021, ONE Properties filed a related appeal under subsection 28(15) of the *Conservation Authorities Act*, in respect of the Hamilton Conservation Authority's refusal of an application for permission to relocate a local wetland on the Site (OLT File No. 21-001567). This appeal is currently scheduled for a first Case Management Conference on February 8, 2022.

**ONE Properties hereby requests that the within *Planning Act* appeal be consolidated with its *Conservations Authority Act* appeal. Both appeals concern the same development project on the same Site. The matters should be consolidated for efficiency and ease of administration.**

The undersigned will be representing ONE Properties on the within appeal and would be pleased to answer any questions that the Tribunal may have. We have enclosed our firm cheque in the amount of \$1,100.00 for the Tribunal's appeal fee. We look forward to hearing from the Tribunal.

Yours truly,

AIRD & BERLIS LLP



Patrick J. Harrington  
PJH/MTB

- c. M. Johnston & S. Manchia, UrbanSolutions  
S. Savelli, ONE Properties Limited Partnership  
S. Robichaud, City of Hamilton  
M. Barrett, Aird and Berlis LLP

Encl.







## 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

## Appeal Form (A1)

<b>Municipal/Approval Authority Date Stamp</b>	<b>Receipt Number (OLT Office Use Only)</b>	<b>Date Stamp – Appeal Received by OLT</b>
	<b>OLT Case Number (OLT Office Use Only)</b>	

Please complete this Appeal Form by following the instructions in the companion document titled "Appeal Form Instructions". Please read **both** documents carefully to ensure you submit the correct information and complete this form correctly.

There are guides available for review on the Tribunal's [website](#) for different appeal types to assist you in filing an appeal.

**Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal) prior to completing this Appeal Form. Relevant portions of the applicable legislation should also be reviewed before submitting this form. Your appeal must be filed with the appropriate authority within the appeal period as set out in the notice of the decision and applicable legislation.**

### Section 1 – Contact Information (Mandatory)

Applicant/Appellant/Objector/Claimant Information			
Last Name:		First Name:	
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation): <b>ONE Properties Limited Partnership</b>			
Email Address:			
Daytime Telephone Number:		Alternative Telephone Number:	
	ext.		
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:

City/Town:	Province:	Country:	Postal Code:

Representative Information			
<input type="checkbox"/> I hereby authorize the named company and/or individual(s) to represent me			
Last Name: <b>Harrington</b>	First Name: <b>Patrick</b>		
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation): <b>Aird &amp; Berlis LLP</b>			
Email Address: <b>pharrington@airdberlis.com</b>			
Daytime Telephone Number: <b>416 865 3424</b>		Alternative Telephone Number: <b>416 627 1224</b>	
ext.		ext.	
Mailing Address			
Unit Number: <b>1800</b>	Street Number: <b>181</b>	Unit Number: <b>1800</b>	Street Number: <b>181</b>
City/Town: <b>Toronto</b>	Province: <b>ON</b>	City/Town: <b>Toronto</b>	Province: <b>ON</b>
<b>Note:</b> If your representative is not licensed under the <i>Law Society Act</i> , please confirm that they have your written authorization, as required by the OLT <i>Rules of Practice and Procedure</i> , to act on your behalf and that they are also exempt under the Law Society’s by-laws to provide legal services. Please confirm this by checking the box below.			
<input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Law Society Act</i> and I have provided my written authorization to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time along with confirmation of their exemption under the Law Society’s by-laws to provide legal services.			

Location Information
Are you the current owner of the subject property?      Yes    X    No
Address and/or Legal Description of property subject to the appeal:
<b>140 Garner Road East</b>
Municipality:
<b>City of Hamilton</b>
Upper Tier (Example: county, district, region):

**Language Requirements**

Do you require services in French?  Yes  No

To file an appeal, please complete the section below. Complete one line for each appeal type

Subject of Appeal		Type of Appeal (Act/Legislation Name)	Reference (Section Number)
Example	Minor Variance	<i>Planning Act</i>	45(12)
1	Draft Plan of Subdivision - Failure to make a decision on the application	<i>Planning Act</i>	51(34)
2			
3			
4			
5			

**Section 2 – Appeal Type (Mandatory)**

Please select the applicable type of matter

Select	Legislation associated with your matter	Complete Only the Section(s) Below
<input checked="" type="checkbox"/>	Appeal of <i>Planning Act</i> matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances	3A
<input type="checkbox"/>	Appeal of <i>Development Charges Act, Education Act, Aggregate Resources Act, Municipal Act</i> matters	3A
<input type="checkbox"/>	Appeal of or objection to <i>Ontario Heritage Act</i> matters under subsections 29, 30.1, 31, 32, 33, 40.1 and 41	3A
<input type="checkbox"/>	Appeal of <i>Planning Act</i> (subsections 33(4), 33(10), 33(15), 36(3)), <i>Municipal Act</i> (subsection 223(4)), <i>City of Toronto Act</i> (subsection 129(4)) and <i>Ontario Heritage Act</i> (subsections 34.1(1), 42(6)) matters	3A & 3B
<input type="checkbox"/>	Appeal of <i>Clean Water Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, Safe Drinking Water Act, Toxics Reduction Act, and Waste Diversion Transition Act</i> matters	4A
<input type="checkbox"/>	Application for Leave to Appeal under the <i>Environmental Bill of Rights, 1993</i>	4B



<input type="checkbox"/>	Appeal under the <i>Niagara Escarpment Planning and Development Act (NEPDA)</i>	5
<input type="checkbox"/>	Appeal of <i>Conservation Authorities Act, Mining Act, Lakes and Rivers Improvement Act, Assessment Act, and Oil, Gas and Salt Resources Act</i> matters	6
<input type="checkbox"/>	Legislation not listed above	Contact OLT before filing your appeal

**Section 3A – Planning Matters**

**Appeal Reasons and Specific Information**

Number of new residential units proposed:

**None**

Municipal Reference Number(s):

**25T-201806**

List the reasons for your appeal:

**Please see the attached cover letter.**

Has a public meeting been held by the municipality?       Yes     No

For appeals of Official Plans, Official Plan Amendments, Zoning By-laws and Zoning By-law Amendments, please indicate if you will rely on one or more of the following grounds:

A: A decision of a Council or Approval Authority is:

- Inconsistent with the Provincial Policy Statement issued under subsection 3(1) of the *Planning Act*
- Fails to conform with or conflicts with a provincial plan
- Fails to conform with an applicable Official Plan

**And**

B: For a non-decision or decision to refuse by council:

<input type="checkbox"/> Consistency with the provincial policy statement, issued under subsection 3(1) of the <i>Planning Act</i>
<input type="checkbox"/> Conformity with a provincial plan
<input type="checkbox"/> Conformity with the upper-tier municipality’s Official Plan or an applicable Official Plan
If it is your intention to argue one or more of the above grounds, please explain your reasons:

<b>Oral/Written submissions to council</b>
Did you make your opinions regarding this matter known to council?
<input type="checkbox"/> Oral submissions at a public meeting of council
<input type="checkbox"/> Written submissions to council
<input checked="" type="checkbox"/> Not applicable

<b>Related Matters</b>
Are there other appeals not yet filed with the Municipality?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there other matters related to this appeal? (For example: A consent application connected to a variance application).
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide the Ontario Land Tribunal Case Number(s) and/or Municipal File Number(s) for the related matters:
<b>Ontario Land Tribunal Case No. OLT 21-001567 – Appeal of Refusal of Permission under s. 28(15) of the <i>Conservation Authorities Act</i></b>

<b>Section 3B – Other Planning Matters</b>
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<b>Appeal Specific Information (Continued)</b>
Date application submitted to municipality if known (yyyy/mm/dd):
Date municipality deemed the application complete if known (yyyy/mm/dd):
Please briefly explain the proposal and describe the lands under appeal:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 3B Checklist\(s\)](#) located [here](#) and submit all documents listed.

**Section 4A – Appeals under Environmental Legislation**

Appeal Specific Information

Outline the grounds for the appeal and the relief requested:

Reference Number of the decision under appeal:

Portions of the decision in dispute:

Date of receipt of Decision or Director's Order (yyyy/mm/dd):

Applying for Stay?  Yes  No

If Yes, outline the reasons for requesting a stay: (Tribunal's Guide to Stays can be viewed [here](#))

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4A Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

**Section 4B – Environmental Application for Leave to Appeal**

Are you filing an Application for Leave to Appeal under the *Environmental Bill of Rights, 1993*?  Yes  No

Identify the portions of the instrument you are seeking to appeal:

Identify the grounds you are relying on for leave to appeal. Your grounds should include reasons why there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind could have made the decision; and why the decision could result in significant harm to the environment:

Outline the relief requested:

There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 4B Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

**Section 5 – Appeal regarding Development Permit Application under the *Niagara Escarpment Planning and Development Act***

**Appeal Specific Information**

Development Permit Application File No:

Address or legal description of the subject property:

Reasons for Appeal: Outline the nature and reasons for your appeal. Specific planning, environmental and/or other reasons are required. (The Niagara Escarpment Plan is available on the Niagara Escarpment Commission’s website ( <a href="http://www.escarpment.org">www.escarpment.org</a> ))

**Section 6 – Mining Claim and Conservation Matters**

**Appeal Specific Information**

List the subject Mining Claim Number(s) (for unpatented mining claims) and accompanying Townships, Areas and Mining Division(s) where mining claims are situated. List all “Filed Only” Mining Claims, if appropriate: (This is to be completed for *Mining Act* appeals only.)

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List the Parcel and the Property Identifier Numbers (PIN), if rents or taxes apply to mining lands, if appropriate (mining claims only):

--

Provide the date of the Decision of the Conservation Authority or the Provincial Mining Recorder, as appropriate:

--

Provide a brief outline of the reasons for your application/appeal/review. If other lands/owners are affected, please include that information in the outline being provided below:

--

**Respondent Information**

Conservation Authority:

--

Contact Person:			
Email Address:			
Daytime Telephone Number:		Alternative Telephone Number:	
		ext.	
Mailing Address or statement of last known address/general area they were living and name of local newspaper if address is not available			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City/Town:	Province:	Country:	Postal Code:
There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the <a href="#">Section 6 Checklist(s)</a> located <a href="#">here</a> and submit all documents listed on the checklist.			

**Section 7 – Filing Fee**

Required Fee			
Please see the attached link to view the <a href="#">OLT Fee Chart</a> .			
Total Fee Submitted: <b>\$ 1,100</b>			
Payment Method	<input type="checkbox"/>	Certified Cheque	<input type="checkbox"/>
		Money Order	<input checked="" type="checkbox"/>
		Lawyer’s general or trust account cheque	
	<input type="checkbox"/>	Credit Card	
If you wish to pay the appeal fee(s) by credit card, please check the box above and OLT staff will contact you by telephone to complete the payment process upon receipt of the appeal form. <b>DO NOT INCLUDE YOUR CREDIT CARD INFORMATION ON THIS FORM. YOU WILL BE CONTACTED TO COMPLETE YOUR PAYMENT OVER THE PHONE.</b>			
If a request for a fee reduction is being requested, please pay the minimum filing fee for each appeal and complete/submit the <a href="#">Fee Reduction request form</a> .			
<input type="checkbox"/> Request for Fee Reduction form is attached (if applicable – see Appeal Form Guide for more information)			


**Section 8 – Declaration (Mandatory)**

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

By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Patrick Harrington		2021/12/13

Personal information or documentation requested on this form is collected under the authority of the *Ontario Land Tribunal Act* and the legislation under which the proceeding is commenced. All information collected is included in the Ontario Land Tribunal (OLT) case file and the public record in this proceeding. In accordance with the *Freedom of Information and Protection of Privacy Act* and section 9 of the *Statutory Powers Procedure Act*, all information collected is available to the public subject to limited exceptions.

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator at [OLT.Coordinator@ontario.ca](mailto:OLT.Coordinator@ontario.ca) or toll free at 1-866-448-2248 as soon as possible.

**Section 9 – Filing Checklists (Mandatory)**

**Filing/Submitting your form and documentation**

You must file your Appeal Form with the appropriate authority(s) by the filing deadline.

If the completed Section is:	Refer to the relevant checklist and submit all documents listed on the checklist when filing your Appeal Form.
Section 3B	Review the Section 3B Checklist(s) and attach all listed documents.
Section 4A	Review the Section 4A Checklist(s) and attach all listed documents.
Section 4B	Review the Section 4B Checklist(s) and attach all listed documents.

If the completed Section is:	You must file with the following:
Section 3A	<p style="text-align: center;">Municipality or the Approval Authority/School Board</p> <p style="text-align: center;">*If you are filing under the <i>Ontario Heritage Act</i>, including under <b>s. 34.1(1)</b>, please carefully review the specific section of that legislation to determine if your appeal needs to be filed with the Tribunal <b>in addition</b> to the Municipality or Approval Authority.</p>
Section 3A & 3B or Section 4A or	<p style="text-align: center;">Ontario Land Tribunal</p> <p style="text-align: center;">655 Bay Street, Suite 1500      Phone: 416-212-6349   1-866-448-2248</p>

<p>Section 4B or Section 6</p>	<p>Toronto, ON M5G 1E5 Website: <a href="http://www.olt.gov.on.ca">www.olt.gov.on.ca</a></p>	
<p>Section 5</p>	<p><b>For the Areas of:</b> Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton</p> <p><b>File with:</b>  NIAGARA ESCARPMENT COMMISSION 232 Guelph Street, 3<sup>rd</sup> Floor Georgetown, ON L7G 4B1</p> <p>Phone: 905-877-5191 Fax: 905-873-7452 Website: <a href="http://www.escarpment.org">www.escarpment.org</a> Email: <a href="mailto:necgeorgetown@ontario.ca">necgeorgetown@ontario.ca</a></p>	<p><b>For the Areas of:</b> Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p><b>File with:</b>  NIAGARA ESCARPMENT COMMISSION 1450 7<sup>th</sup> Avenue Owen Sound, ON N4K 2Z1</p> <p>Phone: 519-371-1001 Fax: 519-371-1009 Website: <a href="http://www.escarpment.org">www.escarpment.org</a> Email: <a href="mailto:necowensound@ontario.ca">necowensound@ontario.ca</a></p>

**NOTE:** Please review the notice of the decision you are appealing to determine the appeal deadline and the specific official with whom the appeal should be filed (e.g. Secretary-Treasurer, Clerk, Minister, Ontario Land Tribunal).

**NOTE:** Relevant portions of the applicable legislation should be reviewed before submitting this form. Please ensure that a copy of this Appeal Form is served in accordance with the requirements of the applicable legislation.