

Barristers & Solicitors

WeirFoulds^{LLP}

November 23, 2022

Via Email & Courier

City of Hamilton
Office of the City Clerk
71 Main Street West, 1st Floor
Hamilton, Ontario L8P 4Y5

Attention: Andrea Holland, City Clerk

Dear Ms. Holland:

Denise Baker
Managing Partner
t. 416-947-5090
dbaker@weirfoulds.com

File 21561.00005

**RE: Notice of Appeal pursuant to 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13
2900 King Street East, Hamilton
2626364 Ontario Inc.**

We are the solicitors for 2626364 Ontario Inc. ("Client"), owner of lands located at 2900 King Street East in the City of Hamilton (the "Subject Site").

On July 20, 2022, the Corporation of the City of Hamilton (the "City") deemed our Client's applications for an official plan amendment ("OPA") and zoning by-law amendment ("ZBA") for the Subject Site complete. As more than 120 days have passed and City Council has failed to make a decision on the OPA and ZBA (collectively, the "Applications"), our Client hereby appeals the Applications to the Ontario Land Tribunal ("OLT" or "Tribunal") pursuant to subsection 22 (7) and 34 (11) of the *Planning Act*, R.S.O. 1990, c. P.13.

Background

The Subject Site is vacant and is located at the southwest corner of King Street East and Centennial Parkway within Stoney Creek, in the City of Hamilton. The Subject Site has a total area of 0.56 hectares with approximately 45 metres of frontage along Centennial Parkway and 54 metres of frontage along King Street East.

Immediately north of the Subject Site is a Husky Gas Station, to the west is the Stoney Creek municipal cemetery, to the south are vacant lands, and to the east is Battlefield Park.

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The City’s Urban Hamilton Official Plan (“UHOP”) identifies Centennial Parkway as a *Major Arterial* road, and King Street East as a *Minor Arterial* road. In addition, the Subject Site is well serviced by existing and planned transit by way of the Hamilton Street Railway, and the Subject Site is also 2.6 kilometers south of the new Confederation Go Station (now under construction) and approximately 1.5 kilometers south of the future LRT station at Eastgate Mall.

Our Client proposes a phased development of the Subject Site with a mixed-use building. The first phase of the development will consist of a 20 storey (north tower) containing 302 units and 356 m² of commercial space. The second phase of the development will consist of an 18 storey (south tower) containing 262 units. The two towers will be connected by a six (6) storey podium with frontage along King Street East and Centennial Parkway. 422 parking spaces will be provided to service the proposed development (collectively, the “**Proposed Development**”).

The Subject Site is designated Neighbourhoods in the UHOP and identified as being on a Secondary Corridor, which is part of the intensification areas in the City under Urban Nodes and Urban Corridors, where intensification is to be directed.

The purpose of the OPA is to redesignate the Subject Site from Neighbourhoods to Site Specific Mixed-Use – Medium Density Designation. The OPA will also permit a net residential density of 970 units per hectare and a maximum height of 20 storeys.

The ZBA will rezone the Subject Site from Community Commercial (C3) to a site-specific Mixed Use Medium Density (C5, ___) zone, modified, with appropriate site-specific zoning regulations.

Reasons for Appeal

In addition to City Council’s failure to make a decision on the Applications, our Client is appealing the Applications because the Applications are appropriate to approve for the following reasons:

1. The Proposed Development will contribute to an appropriate range and mix of residential units in the neighborhood and it will contribute to creating a complete community by providing a mixed-use form of development.

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2. The Proposed Development will optimize use of the Subject Site, make use of existing and planned infrastructure, and it will assist the City in achieving its growth targets as well as its goals, objectives and policies for growth.
3. The Proposed Development will support existing and planned transit.
4. A series of detailed technical studies related to urban design, cultural heritage, archeological assessment, environmental assessment, functional servicing, wind, noise, sun/shadow study and transportation impact study have been completed. All of these studies support approval of the Applications.
5. Approval of the Applications would have regard for the matters of provincial interest under section 2 of the *Planning Act*, it would be consistent with the Provincial Policy Statement, 2020 and conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020.
6. The Applications meet the intent of the goals, objectives and policies of UHOP.
7. The Proposed Development meets the test of good planning and is in the public interest to approve.
8. Such further and other reasons as counsel may advise and the OLT may permit.

Filing Requirements

Enclosed with this Notice of Appeal are the following requisite documents:

1. A completed OLT Appeal Form (A1) for the appeal of the Applications;
2. Two firm cheques, each in the amount of \$1,100.00, payable to the Minister of Finance, representing the filing fees associated with the processing of the appeal of the Applications.

Kindly acknowledge receipt of this Notice of Appeal together with its enclosures and advise when the appeal has been forwarded to the OLT.

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Thank you for your attention to this matter. Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours truly,

WeirFoulds LLP



Per: Denise Baker
Managing Partner

DB/rk

Encls 3

C: Client

18434435.1



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

Appeal Form (A1)

Date Stamp

(OLT Office Use Only)

OLT Case Number
(OLT Office Use Only)

**Date Stamp – Appeal Received
by OLT**

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):				
2626364 Ontario Inc.				
Email Address:				
kyle@camarrogroupp.com				
Daytime Telephone Number:			Alternative Telephone Number:	
905 928-1033		ext.		
Mailing Address				
Unit Number:	Street Number:	Street Name:		P.O. Box:
	140			
City/Town:	Province:	Country:	Postal Code:	
Burlington	ON	Canada	L7L 2H7	

Representative Information			
X I hereby authorize the named company and/or individual(s) to represent me			
Last Name:		First Name:	
Baker		Denise	
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):			
WeirFoulds LLP			
Email Address:		LSO Number (if applicable):	
dbaker@weirfoulds.com		48116H	
Daytime Telephone Number:		Alternative Telephone Number:	
416-947-5090		905-829-8600	
		ext.	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
10	1525	Cornwall Road	
City/Town:	Province:	Country:	Postal Code:
Oakville	ON	Canada	L6J 0B2
<p>Note: 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.</p> <p><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.</p>			

Location Information	
Are you the current owner of the subject property? X Yes <input type="checkbox"/> No	
Address and/or Legal Description of property subject to the appeal:	
2900 King Street East	
Municipality:	
City of Hamilton	
Upper Tier (Example: county, district, region):	

Language Requirements	
Do you require services in French? <input type="checkbox"/> Yes X 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	Official Plan Amendment	<i>Planning Act</i>	22(7)
2	Zoning By-law Amendment	<i>Planning Act</i>	34(11)
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
X	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, 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>	5A
<input type="checkbox"/>	Application to amend the <i>Niagara Escarpment Plan</i>	5B
<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:

564

Municipal Reference Number(s):

UHOPA-22-022 and ZAC-22-048

List the reasons for your appeal:

See attached correspondence

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:

- Consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*

<input checked="" type="checkbox"/> Conformity with a provincial plan <input checked="" 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:
See attached correspondence

Oral/Written submissions to council
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

Related Matters
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, please provide the Ontario Land Tribunal Case Number(s) and/or Municipal File Number(s) for the related matters:

Section 3B – Other Planning Matters
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Appeal Specific Information (Continued)
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? <input type="checkbox"/> Yes <input type="checkbox"/> 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 <i>Environmental Bill of Rights, 1993</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> 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 5A – Appeal regarding Development Permit Application under the *Niagara Escarpment Planning and Development Act*

Appeal Specific Information	
Development Permit Application File No:	
Name of Applicant for Development Permit:	
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 (www.escarpment.org))	

Section 5B – Application to amend the *Niagara Escarpment Plan*

Owner			
Last Name:		First Name:	
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:

Property Location & Information			
Municipality:		Street Number:	Street Name:
Lot:	Concession:	And/or	Plan:
Assessment Roll Number or PIN:		Lot Size:	

Property Servicing					
Existing Road Frontage:	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private	Proposed Road Frontage:	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private
Existing Water Supply:	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private	Proposed Water Supply:	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private
Existing Sewage Disposal:	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private	Proposed Sewage Disposal:	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private

Is the Proposal the Subject of a Current Application? Please identify:	
<input type="checkbox"/> Development Permit under <i>Niagara Escarpment Planning and Development Act</i> <input type="checkbox"/> The <i>Planning Act</i> (Official Plan or Zoning By-law Amendment) <input type="checkbox"/> The <i>Aggregate Resources Act</i> (License) <input type="checkbox"/> Committee of Adjustment (Minor Variance) <input type="checkbox"/> Land Division Committee (Severance) <input type="checkbox"/> Other:	

Description of the Property
Describe the current use of the property including any existing buildings or structures:

Category of the Proposed Amendment
<input type="checkbox"/> Change in Designation <input type="checkbox"/> Change to Policy <input type="checkbox"/> Request for Urban Servicing <input type="checkbox"/> Change to Plan Boundary <input type="checkbox"/> Other:

Detailed Description of Proposed Amendment
Provide a detailed description of the proposed amendment:

Justification and Rationale (Including Reasons, Argument and Evidence in Support of the Amendment) (See Niagara Escarpment Plan Amendment Guidelines)
<p>The justification submitted with the application should address the following:</p> <ol style="list-style-type: none"> 1. Analysis of how the proposed amendment is consistent with the <i>Niagara Escarpment Planning and Development Act</i>, the Niagara Escarpment Plan, and shall be consistent with other relevant Provincial plans. 2. A justification which includes the rationale for the amendment, as well as reasons, arguments or evidence in support of the change to the Plan proposed through the amendment. <p>The following studies and reports may be necessary to be submitted in support of justification of the proposed amendment (The applicability of the following will depend on the nature of the application):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Agricultural Land Use Impacts <input type="checkbox"/> Air Quality Impact Assessment <input type="checkbox"/> Engineering Reports <input type="checkbox"/> Environmental Impact Study <input type="checkbox"/> Geological Studies <input type="checkbox"/> Grading Plans – Existing and proposed and Slope Stabilization Plans and Typical Cross Sections <input type="checkbox"/> Historical/Cultural/Archeological Impact Assessment <input type="checkbox"/> Hydrogeological Impact Assessment <input type="checkbox"/> Landscape/Visual Impact Analysis <input type="checkbox"/> Noise Impact Assessment <input type="checkbox"/> Setback from the Brow of the Escarpment <input type="checkbox"/> Suitable for Septic Systems <input type="checkbox"/> Traffic Impact Assessment <input type="checkbox"/> Tree Removal/Planting including Berming and Landscaping <input type="checkbox"/> Other:

Site Plan

Please attach an accurate Site Plan drawn to scale. The Site Plan may be drawn on a blank sheet; on an attached Survey, or by using mapping software (Ontario Make a Map etc.). The Site Plan must show existing features, such as, buildings and structures, streams, changes in grades, rock outcrops, driveways, forested areas and proposed uses to changes to the property or the features.

NOTE: For amendments regarding Mineral Resource Extraction Areas, please provide copies of the Site Plan as required by Regulation under the *Aggregates Resources Act*.

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:

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Respondent Information

Conservation Authority:

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Contact Person:

--

Email Address:

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Daytime Telephone Number:	Alternative Telephone Number:
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	ext.	
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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:

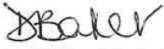
There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the [Section 6 Checklist\(s\)](#) located [here](#) and submit all documents listed on the checklist.

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Section 7 – Filing Fee

Required Fee			
Please see the attached link to view the OLT Fee Chart.			
Total Fee Submitted: \$2,200.00			
Payment Method	<input type="checkbox"/> Certified Cheque	<input type="checkbox"/> Money Order	<input checked="" type="checkbox"/> Lawyer’s general or trust account cheques
	<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.			
If a request for a fee reduction is being requested, please pay the minimum filing fee for each appeal and complete/submit the Fee Reduction request form .			
<input type="checkbox"/> Request for Fee Reduction form is attached (if applicable – see Appeal Form Guide for more information)			

Section 8 – Declaration (Mandatory)

Declaration		
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)
Denise Baker		2022/11/21
Personal information or documentation requested on this form is collected under the authority of the <i>Ontario Land Tribunal Act</i> 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 <i>Freedom of Information and Protection of Privacy Act</i> and section 9 of the <i>Statutory Powers Procedure Act</i> , all information collected is available to the public subject to limited exceptions.		
We are committed to providing services as set out in the <i>Accessibility for Ontarians with Disabilities Act, 2005</i> . If you have any accessibility needs, please contact our Accessibility Coordinator at 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	Municipality or the Approval Authority/School Board *If you are filing under the <i>Ontario Heritage Act</i> , including under s. 34.1(1) , please carefully review the specific section of that legislation to determine if your appeal needs to be filed with the Tribunal in addition to the Municipality or Approval Authority.
Section 3A & 3B or Section 4A or Section 4B or Section 6	Ontario Land Tribunal 655 Bay Street, Suite 1500 Toronto, ON M5G 1E5 Phone: 416-212-6349 1-866-448-2248 Website: www.olt.gov.on.ca
Section 5A or 5B	For the Areas of: Dufferin County (Mono) Region of Halton For the Areas of: Bruce County Grey County

	<p>Region of Peel Region of Niagara City of Hamilton</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 232 Guelph Street, 3rd Floor Georgetown, ON L7G 4B1</p> <p>Phone: 905-877-5191 Fax: 905-873-7452 Website: www.escarpment.org Email: necgeorgetown@ontario.ca</p>	<p>Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 1450 7th Avenue Owen Sound, ON N4K 2Z1</p> <p>Phone: 519-371-1001 Fax: 519-371-1009 Website: www.escarpment.org Email: necowensound@ontario.ca</p>
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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.