

Barristers & Solicitors

WeirFoulds^{LLP}

July 13, 2023

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

Via Email & Courier

File

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:

**RE: Notice of Appeal pursuant to 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13
487 Shaver Road, Hamilton**

We are the solicitors for Shaver Road M.D. Holdings Inc. ("**Client**"), owner of lands located at 487 Shaver Road in the City of Hamilton (the "**Subject Site**").

On November 17, 2021 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 to be complete. As more than 120 days have passed since the applications were deemed complete 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, (the "**Act**").

Background

The Proposal

The OPA and ZBA are being requested to facilitate the redevelopment of the Subject Site for residential purposes comprised of four (4) townhouse blocks including 36 units and 45 surface parking spaces at a density of 81 units per hectare.

Subject Site and Surrounding Area

The Subject Site is located on the east side of Shaver Road with an approximate area of 0.45 hectares and a frontage of 30.4 metres. Access is currently provided from a gravel drive off of Shaver Road.

The Site is currently occupied by several buildings, including a commercial garage facility located on the eastern portion of the site.

The surrounding uses are characterized as follows:

- North:** A 2-storey townhouse complex named "Westbrooke Valley" is located immediately to the north (see Image B and C), which includes the Shaver Estates Park.
- East:** The City of Hamilton Works (Ancaster) Operations Yard is located immediately to the east and south. Further east is a naturalized creek area and a residential subdivision consisting of single-detached dwellings.
- South:** The City of Hamilton Works (Ancaster) Operations Yard is located immediately to the south. Further south is a vacant site currently being redeveloped for a 24 unit block townhouse development. In addition, a recently built 3-storey townhouse development is located along Garner Road West.
- West:** Across Shaver Road, on the west side of the street is large commercial

shopping area hosting a variety of retail stores, restaurants, medical clinics, and big-box style department stores providing for the daily grocery and shopping needs of the local neighbourhood and wider area.

The Applications

An amendment to the Urban Hamilton Official Plan is required to redesignate the Site from “Medium Density Residential 2a” to Medium Density Residential 2b” to establish a Site-Specific Policy to permit four-storey residential buildings at a density of 81 units per hectare. An amendment to Zoning By-law 87-57 (Ancaster) is required to rezone the Site from the Rural Commercial “C5-242” Zone, to a modified Residential Multiple “RM5-__” Zone to permit 36 stacked townhouses (multi-plex dwellings) including site specific regulations to accommodate the Site configuration illustrated in the Site Plan Concept dated February 23, 2023.

Reasons for Appeal

In addition to City Council’s failure to make a decision on the Applications within the statutory timeframe, our Client is appealing the Applications for the following reasons:

1. The Applications have had regard to matters of Provincial interest as set out in section 2 of the Act, are consistent with the Provincial Policy Statement and conform to the Growth Plan. Specifically, the Subject Site is an appropriate location for growth and development as it is currently an underutilized property located within Hamilton’s Urban Boundary and along a collector road in close proximity to commercial amenities, recreation, and community facilities and in an area with available transit, include future frequent rapid transit.
2. The proposed development represents a cost-effective development pattern as it utilizes municipal water and wastewater services. The Proposed development represents a compact form that efficiently uses land, resources and infrastructure.
3. A series of detailed technical studies have been completed and were submitted with the Applications. All of these studies support approval of the Applications.

Barristers & Solicitors

WeirFoulds LLP

4. But for the UHOP amendment to redesignate the Site from "Medium Density Residential 2a" to Medium Density Residential 2b", the Applications otherwise meet the intent of the goals, objectives and policies of UHOP.
5. There are no unacceptable adverse impacts resulting from the proposed development to any of the surrounding properties and improves a current underutilized site.
6. The proposed development meets the test of good planning and is in the public interest.
7. 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.

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.

Barristers & Solicitors

WeirFoulds^{LLP}

Yours truly,

WeirFoulds LLP

A handwritten signature in black ink, appearing to read "DBaker", with a stylized flourish at the end.

Per: Denise Baker
Managing Partner



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:		
Hakimi			Hamid		
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):					
Shaver Road M.D. Holdings Inc.					
Email Address:					
marko@brooklyncontract.com					
Daytime Telephone Number:				Alternative Telephone Number:	
289 812 7234 x210		ext.			
Mailing Address					
Unit Number:		Street Number:		Street Name:	
101		3410		South Service Road	
City/Town: Burlington		Province: ON		Country: Canada	
				Postal Code: L7N3T2	

Representative Information				
<input type="checkbox"/> 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):				
WeirFouds LLP				
Email Address:				
dbaker@weirfoulds.com				
Daytime Telephone Number:			Alternative Telephone Number:	
416-947-5090		ext.		
Mailing Address				
Unit Number:	Street Number:	Street Name:		P.O. Box:
4100	66	Wellington Street West		35
City/Town: Toronto		Province: ON	Country: Canada	Postal Code: M5K1B7
<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 <i>OLT 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:	
487 Shaver Road, Hamilton	
Municipality:	
Upper Tier (Example: county, district, region):	

Language Requirements			
Do you require services in French?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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	Planning Act	22(7)
2	Zoning By-law Amendment	Planning Act	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
<input 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, 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: 36
Municipal Reference Number(s):
List the reasons for your appeal:
<p>Please see attached correspondence</p>
Has a public meeting been held by the municipality? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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:
<input type="checkbox"/> Inconsistent with the Provincial Policy Statement issued under subsection 3(1) of the <i>Planning Act</i> <input type="checkbox"/> Fails to conform with or conflicts with a provincial plan <input type="checkbox"/> Fails to conform with an applicable Official Plan
And B: For a non-decision or decision to refuse by council:
<input checked="" type="checkbox"/> Consistency with the provincial policy statement, issued under subsection 3(1) of the <i>Planning Act</i> <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:

Please 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 of council

☐ Written submissions to council

☒ Not applicable

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

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

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 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 (www.escarpment.org))

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.)

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:

ext.


Alternative Telephone Number:

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.			

Section 7 – Filing Fee

Required Fee			
Please see the attached link to view the OLT Fee Chart .			
Total Fee Submitted: \$			
Payment Method	<input type="checkbox"/>	Certified Cheque	<input type="checkbox"/>
		Money Order	<input checked="" type="checkbox"/>
	<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. DO NOT INCLUDE YOUR CREDIT CARD INFORMATION ON THIS FORM. YOU WILL BE CONTACTED TO COMPLETE YOUR PAYMENT OVER THE PHONE.			
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		2003/07/13
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

	<p>*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.</p>	
Section 3A & 3B or Section 4A or Section 4B or Section 6	<p>Ontario Land Tribunal 655 Bay Street, Suite 1500 Toronto, ON M5G 1E5</p>	<p>Phone: 416-212-6349 1-866-448-2248 Website: www.olt.gov.on.ca</p>
Section 5	<p>For the Areas of: Dufferin County (Mono) Region of Halton 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 Phone: 905-877-5191 Fax: 905-873-7452 Website: www.escarpment.org Email: necgeorgetown@ontario.ca</p>	<p>For the Areas of: Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p>File with: NIAGARA ESCARPMENT COMMISSION 1450 7th Avenue Owen Sound, ON N4K 2Z1 Phone: 519-371-1001 Fax: 519-371-1009 Website: www.escarpment.org Email: necowensound@ontario.ca</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.