



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

August 11, 2023

Our File No.: 308749

VIA E-MAIL & COURIER

Andrea Holland
City Clerk
City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

E-mail: Andrea.Holland@hamilton.ca and clerk@hamilton.ca

Dear Ms. Holland:

Re: Appeals: Pursuant to subsections 22(7) & 34(11) of *Planning Act*
Subject: Official Plan and Zoning By-law Amendment Applications
Appellant: 499 Mohawk Inc.
Location: 499 Mohawk Road East, Hamilton (Ward 07)
File Nos.: UHOPA-23-001 & ZAC-23-001

Introduction

Aird & Berlis LLP is counsel to 499 Mohawk Inc. (the "Applicant"). The Applicant is the owner of lands known municipally as 499 Mohawk Road in the City of Hamilton (the "Site"). The Site is within the City's Burkholme Neighbourhood, between Upper Sherman Avenue and East 27th Street. The Site is 3.95 hectares (9.76 acres) in size and is presently occupied by a commercial strip mall that contains a vacant grocery store and other commercial uses that have ceased operation.

The Site is within a *Neighbourhoods* designation under Schedule E (Urban Structure) to the Urban Hamilton Official Plan ("UHOP"). On Schedule E-1 (Urban Land Use), the Site is further identified as *District Commercial*. The latter designation permits residential uses above the first storey, provided that the overall development enhances and is compatible with the scale and character of existing development. Existing development proximate to the Site includes a mix of 1-and-2 storey detached dwellings as well as 6-12 storey apartment buildings, in addition to various community, institutional and commercial uses. The Site is currently zoned "District Commercial (C6)".

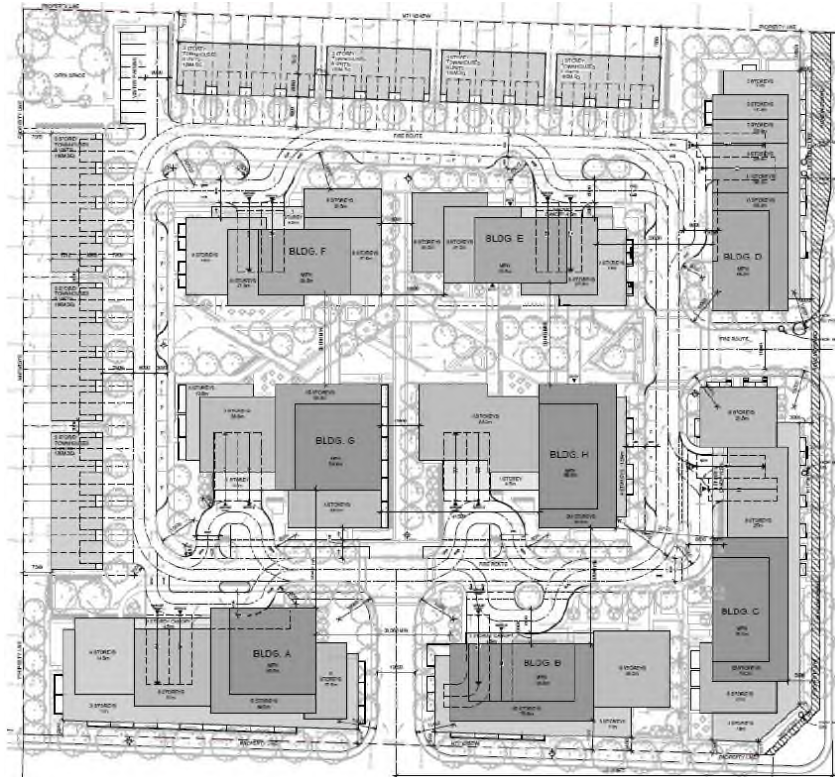
Proposal

Consultations between the Applicant and the City of Hamilton on an intensified development project for the Site began in November 2021 and included a Development Review Team Meeting held in January 2022. The Applicant filed private official plan and zoning by-law amendment applications with the City on October 24, 2022 and these applications were deemed complete by the City as of November 21, 2022.

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The Applicant's proposal consists of two (2) 25-storey multiple dwellings, one (1) 20-storey multiple dwelling, two (2) 15-storey multiple dwellings, one (1) 13-storey multiple dwelling, two (2) 8-storey multiple dwellings and seven (7) 3-storey townhouse dwellings. The proposed multiple dwellings contain 1945 dwelling units, while the proposed townhouses comprise of 50 dwelling units for a total of 1995 dwelling units. The proposal is accommodated by 1995 resident and visitor parking spaces contained in surface parking spaces and an underground parking garage, as well as 95 short term bicycle parking spaces and 948 long term bicycle parking spaces.



To facilitate this proposal, the Applicant sought the following through its private applications:

- **OPA:** Amend Schedule E-1 to change the designation of the Site from *District Commercial* to *Mixed Use – Medium Density*. This change will permit the range of housing types and densities summarized above. As well, an amendment to Map 2 of Volume 3 to the UHOP is proposed to create a site-specific exception to Policy E.4.6.5 of the UHOP to permit a maximum height of 25-storeys on the Site.
- **ZBA:** Amend Schedule "A" to Zoning By-law No. 05-200 to rezone the Site from "District Commercial (C6)" to "Mixed Use – Medium Density (C5, ____)". As well, an amendment to Schedule C to Zoning By-law 05-200 is proposed to create a further "Special Exception" that facilitates the setbacks, heights, amenity areas, landscaped area and parking ratio that will apply to the Site.

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Appeals

It has been over 120 days since the Applicant's OPA and ZBA applications were deemed complete by the City. While Design Review Panel and Neighbourhood Information meetings were held in December 2022 and February 2023 respectively, Hamilton City Council has to date failed to make a decision regarding the applications. Therefore, pursuant to subsections 22(7) and 34(11) of the *Planning Act*, we are writing on our client's behalf to appeal these OPA and ZBA applications to the Ontario Land Tribunal ("OLT" or "Tribunal").

Please accept this covering letter, the attached completed OLT appeal form (A1) and our firm cheques in the amount of \$1,100.00 (x2), representing the Tribunal's appeal fees, in satisfaction of the appeal requirements under both subsections 22(7) and 34(11) of the *Planning Act*.

Position on Appeals

It will be the Applicant's position on these appeals that its OPA and ZBA for the Site are consistent with the 2020 Provincial Policy Statement and conform with the 2020 Growth Plan for the Greater Golden Horseshoe. Further, the OPA advances the goals and objectives of the Urban Hamilton Official Plan, including with respect to redevelopment and intensification on a serviced-but-underutilized urban site that fronts onto a two-way, five-lane, double-sidewalk Major Arterial Road (being Mohawk Road East). The ZBA appropriately implements and regulates the proposed development in a manner that constitutes good planning within the area context.

The Applicant is prepared to call members of its professional consulting team to give expert evidence before the Tribunal in support of its position, including evidence in the areas of land use planning, functional servicing, site engineering, landscape design, stormwater management, transportation, noise, wind, sun/shadow and urban design.

Potential for Scoping of Issues or Resolution

The Applicant would welcome the opportunity to continue discussions between its expert consulting team and staff/representatives for Hamilton, including through formal mediation if deemed appropriate. However, any discussions to resolve these appeals should not result in delaying the Tribunal's consideration of the OPA and ZBA. It will be the Applicant's intention to seek dates for a merit hearing as soon as the Tribunal can accommodate.

Contact Information

Our client's consulting planner is Matt Johnston, MCIP, RPP, Principal of Urban Solutions.

We trust that the above is satisfactory. However, should you have any questions or require additional information please contact the undersigned at pharrington@aridberlis.com or (416) 865-3424.

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Yours truly,

AIRD & BERLIS LLP



Patrick J. Harrington
PJH/np

Encl.

c. Client
M. Johnston, Urban Solutions

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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)

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

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):			
499 Mohawk Inc.			
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

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

Last Name:

First Name:

Harrington**Patrick**

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):

Aird & Berlis LLP

Email Address:

LSO Number (if applicable):

pharrington@airdberlis.com**510420**

Daytime Telephone Number:

Alternative Telephone Number:

416-865-3424

ext.

Mailing Address

Unit Number:

Street Number:

Street Name:

P.O. Box:

1800**181****Bay Street**

City/Town:

Province:

Country:

Postal Code:

Toronto**ON****Canada****M5J 2T9**

Note: If your representative is not licensed under the *Law Society Act*, please confirm that they have your written authorization, as required by the *OLT Rules of Practice and Procedure*, 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.

I certify that I understand that my representative is not licensed under the *Law Society Act* 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 No

Address and/or Legal Description of property subject to the appeal:

499 Mohawk Road East, Hamilton

Municipality:

City of Hamilton

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	<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)
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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>	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:

1995 new dwelling units

Municipal Reference Number(s):

UHOPA-23-001 & ZAC-23-001

List the reasons for your appeal:

Please refer to the attached covering 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:

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

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 refer to the attached covering letter.

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):

2022/10/24

Date municipality deemed the application complete if known (yyyy/mm/dd):

2022/11/21

Please briefly explain the proposal and describe the lands under appeal:

Please refer to the attached covering letter.

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 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))

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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:

- Development Permit under *Niagara Escarpment Planning and Development Act*
- The *Planning Act* (Official Plan or Zoning By-law Amendment)
- The *Aggregate Resources Act* (License)
- Committee of Adjustment (Minor Variance)
- Land Division Committee (Severance)
- Other:

Description of the Property

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

Category of the Proposed Amendment

- Change in Designation
- Change to Policy
- Request for Urban Servicing
- Change to Plan Boundary
- 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)

The justification submitted with the application should address the following:

1. Analysis of how the proposed amendment is consistent with the *Niagara Escarpment Planning and Development Act*, 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.

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):

- Agricultural Land Use Impacts
- Air Quality Impact Assessment
- Engineering Reports
- Environmental Impact Study
- Geological Studies
- Grading Plans – Existing and proposed and Slope Stabilization Plans and Typical Cross Sections
- Historical/Cultural/Archeological Impact Assessment
- Hydrogeological Impact Assessment
- Landscape/Visual Impact Analysis
- Noise Impact Assessment
- Setback from the Brow of the Escarpment
- Suitable for Septic Systems
- Traffic Impact Assessment
- Tree Removal/Planting including Berming and Landscaping
- 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*.

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 <i>Mining Act</i> 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:	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 [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: \$2200

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.

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](#).


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)
Patrick J. Harrington		2023/08/11

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 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 align="center">Municipality or the Approval Authority/School Board</p> <p align="center">*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 5A or 5B	<p align="center">For the Areas of:</p> <p align="center">Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton</p> <p align="center">File with:</p> <p align="center">NIAGARA ESCARPMENT COMMISSION 232 Guelph Street, 3rd Floor Georgetown, ON L7G 4B1</p> <p align="center">Phone: 905-877-5191 Fax: 905-873-7452</p>	<p align="center">For the Areas of:</p> <p align="center">Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p align="center">File with:</p> <p align="center">NIAGARA ESCARPMENT COMMISSION 1450 7th Avenue Owen Sound, ON N4K 2Z1</p> <p align="center">Phone: 519-371-1001 Fax: 519-371-1009 Website: www.escarpment.org</p>

	Website: www.escarpment.org Email: necgeorgetown@ontario.ca	Email: necowensound@ontario.ca
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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.