

AIRD BERLIS

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April 19, 2024

By Courier and Email: [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

Janet Pilon  
Acting Clerk  
City of Hamilton  
71 Main Street West  
Hamilton, ON  
L8P 4Y5

Dear Ms. Pilon:

**Re: 3054 Homestead Drive, 9174 & 9166 Airport Road, Hamilton  
Draft Plan of Subdivision, Official Plan & Zoning By-law Amendment Applications  
25T-202202, UHOPA-22-008 & ZAC-22-017**

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Aird & Berlis LLP are lawyers for Fengate Homestead Holdings Inc. LP (the "**Applicant**"), the owner of lands located at 3054 Homestead Drive, and 9174 & 9166 Airport Road in the City of Hamilton (the "**Site**").

Please accept this letter as our client's Notice of Appeal pursuant to sections 22(7), 34(11) and 51(34) of the *Planning Act*.

### **The Site**

The Site consists of three lots of record, with municipal addresses 3045 Homestead Drive, 9174 & 9166 Airport Road in the City of Hamilton. It is located beside the John C. Munro Hamilton International Airport to the west, agricultural fields to the north, several residential properties to the east and south.

The Site is approximately 31.38 hectares (77.55 acres) in size. It is occupied by a mix of actively managed agricultural fields, fallow fields and vacant residential land. The Site is irregularly shaped and has frontage along East Cargo Drive to the west, Homestead Drive to the east, and the properties at 9174 & 9166 Airport Road have frontage on Airport Road to the south.

The Site is generally flat. A wetland of 1.11 hectares in size is located on the Site, generally near the eastern property line, and is proposed to be relocated as part of the proposed development.

### **Proposed Development and Required Approvals.**

On December 24, 2021 our client filed applications with the City for Draft Plan of Subdivision approval, and Official Plan and Zoning By-law Amendments to facilitate the development of the Site with a 5-building industrial subdivision with access via a new public road.

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The Site is designated as "Employment Areas" and "Neighbourhoods" in Schedule E to the City of Hamilton's Urban Hamilton Official Plan ("UHOP"), and as "Airport Employment Growth District" and "District Commercial" under UHOP Schedule E.1.

The majority of the Site is located within the Airport Growth District Secondary Plan Area and is designated "Airport Reserve". The eastern-most portion of the Site is subject to the Mount Hope Secondary Plan, and is designated as "District Commercial" thereunder. The Official Plan Amendment is required to add the eastern-most portion of the Site to the Airport Employment Growth District Secondary Plan, remove that portion from the Mount Hope Secondary Plan, and then re-designate the entire Site to the "Airport Light Industrial" designation.

The Site is subject to City of Hamilton Zoning By-law No. 05-200, and is located within the District Commercial (C6-580) and Airport Reserve (M9) Zones. The Zoning By-law Amendment is required to rezone the lands to the Airport Light Industrial Zone and introduce site specific regulations to permit the development.

The implementing Draft Plan of Subdivision is required to create the development blocks, the public road, and the proposed natural heritage block.

### **The Policy Framework**

The development proposed for the Site represents an optimal intensification opportunity for new employment uses on an underused parcel of land on a well located property consistent with the direction and policies of the Provincial Policy Statement, 2020.

The development proposal similarly conforms to the policy direction of the Growth Plan for the Greater Golden Horseshoe, 2020. The proposed redevelopment of the Site achieves the Growth Plan's objectives by supporting efficient land use, and by creating new employment and economic development opportunities.

The proposed development conforms with the urban design policies of the UHOP, and will implement the general intent of the Airport Employment Growth District Secondary Plan, which directs that development within this area should foster new industrial and economic opportunities. The proposed development will be compatible with surrounding land uses, including the agricultural and residential uses, which has been demonstrated through the extensive studies and reports accompanying the planning applications. The proposed development will also ensure that the natural heritage features present on the site are protected in the long term, through an appropriate compensation and mitigation plan for the on-Site wetland.

### **Notice of Appeal**

A total of 3 formal resubmissions of materials, and revisions to the development concept, which been filed by on behalf of our client in response to City and Agency comments. While our client and its team have worked to satisfy staff comments through such revisions and revisions, there are still remaining issues. Accordingly, there does not appear to be a reasonable prospect of the applications advancing to Council for approval within an appropriate timeframe, and this appeal is necessary.

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Notwithstanding this appeal, our client remains committed to working with municipal staff to seek to collaboratively resolve the above issues if possible.

Enclosed with this letter is the completed Tribunal A1 form and three cheques in the amount of \$1,100.00 each representing the filing fees.

Should you have any questions regarding this matter or require any further information, please do not hesitate to contact me or Patrick Harrington ([pharrington@airdberlis.com](mailto:pharrington@airdberlis.com)).

Yours truly,

AIRD & BERLIS LLP



Matthew Helfand  
MH:tp

Enclosures

56759200.1



## 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)

<p><b>Municipal/Approval Authority Date Stamp</b></p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>OFFICE OF THE CITY CLERK</p> <p style="font-size: 1.2em;">APR 22 2024</p> <p>REF'D TO:</p> </div>	<p><b>Receipt Number (OLT Office Use Only)</b></p>	<p><b>Date Stamp – Appeal Received by OLT</b></p>
<p><b>OLT Case Number (OLT Office Use Only)</b></p>		

You may be able to submit your appeal online using our new e-file service if:

- the approval authority you are submitting your appeal to is registered on e-file; or
- you are appealing directly to the Ontario Land Tribunal

Please visit our [e-file page](#) to learn more.

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>Fengate Homestead Holdings Inc. LP</b>		
Email Address:		
<b>mark.sim@fengate.com</b>		
Daytime Telephone Number:	Alternative Telephone Number:	
<b>416-488-4184</b>	ext.	

Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
<b>700</b>	<b>2275</b>	<b>Upper Middle Rd. E.</b>	
City/Town:	Province:	Country:	Postal Code:
<b>Oakville</b>	<b>ON</b>		<b>L6H 0C3</b>

Representative Information			
<input checked="" type="checkbox"/> I hereby authorize the named company and/or individual(s) to represent me			
Last Name:		First Name:	
<b>Helfand</b>		<b>Matthew</b>	
<b>Harrington</b>		<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>mhelfand@airdberlis.com</b>			
<b>pharrington@airdberlis.com</b>			
Daytime Telephone Number:		Alternative Telephone Number:	
<b>416-865-4626</b>	ext.		
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
<b>1800</b>	<b>181</b>	<b>Bay Street</b>	
City/Town:	Province:	Country:	Postal Code:
<b>Toronto</b>	<b>ON</b>		<b>M5G 2T9</b>
<p><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 <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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Address and/or Legal Description of property subject to the appeal:
<b>3054 Homestead Drive, 9174 &amp; 9166 Airport Road</b>
Municipality:
<b>Hamilton</b>
Upper Tier (Example: county, district, region):
<b>Regional Municipality of Hamilton-Wentworth</b>



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	Draft Plan of Subdivision	<i>Planning Act</i>	51(34)
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 (Industrial Subdivision)**

Municipal Reference Number(s):

**25T-202202, UHOPA-22-008 & ZAC-22-017**

List the reasons for your appeal:

**Please see the attached.**

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:
<b>Please see the attached.</b>

<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 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**

<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 <u>Section 3B Checklist(s)</u> located <u>here</u> 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:

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 <a href="#">Section 4B Checklist(s)</a> located <a href="#">here</a> and submit all documents listed on the checklist.

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

<b>Appeal Specific Information</b>
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 <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:
<p>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.</p>			

**Section 7 – Filing Fee**

<b>Required Fee</b>			
Please see the attached link to view the <a href="#">OLT Fee Chart</a> .			
Total Fee Submitted: <b>\$1,100 / \$1,100 / \$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	
<p>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></p>			
<p>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>.</p> <p><input type="checkbox"/> Request for Fee Reduction form is attached (if applicable – see Appeal Form Guide for more information)</p>			

**Section 8 – Declaration (Mandatory)**

<b>Declaration</b>		
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.		
<b>Name of Appellant/Representative</b>	<b>Signature of Appellant/Representative</b>	<b>Date (yyyy/mm/dd)</b>
<b>Matthew Helfand</b>		<b>2024-04-19</b>
<p>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.</p>		

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.

<b>If the completed Section is:</b>	<b>Refer to the relevant checklist and submit all documents listed on the checklist when filing your Appeal Form.</b>
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.

<b>If the completed Section is:</b>	<b>You must file with the following:</b>	
Section 3A	Municipality or the Approval Authority/School Board  *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.	
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: <a href="http://www.olt.gov.on.ca">www.olt.gov.on.ca</a>
Section 5	<b>For the Areas of:</b> Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton  <b>File with:</b>  NIAGARA ESCARPMENT COMMISSION	<b>For the Areas of:</b> Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)  <b>File with:</b>  NIAGARA ESCARPMENT COMMISSION  1450 7 <sup>th</sup> Avenue

	<p>232 Guelph Street, 3<sup>rd</sup> Floor Georgetown, ON L7G 4B1</p> <p>Phone: 905-877-5191 Fax: 905-873-7452</p> <p>Website: <a href="http://www.escarpment.org">www.escarpment.org</a> Email: <a href="mailto:necgeorgetown@ontario.ca">necgeorgetown@ontario.ca</a></p>	<p>Owen Sound, ON N4K 2Z1</p> <p>Phone: 519-371-1001 Fax: 519-371-1009</p> <p>Website: <a href="http://www.escarpment.org">www.escarpment.org</a> Email: <a href="mailto:necowensound@ontario.ca">necowensound@ontario.ca</a></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.