

**AIRD BERLIS**

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July 16, 2024

File No. 319417

BY EMAIL & COURIER

Matthew Trennum  
City Clerk  
City of Hamilton  
71 Main Street West  
Hamilton, ON L8P 4Y5

E-mail: [matthew.trennum@hamilton.ca](mailto:matthew.trennum@hamilton.ca) and [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

Dear Mr. Trennum:

**Re: Notice of Appeal – Zoning By-law Amendment Application and Draft Plan of Subdivision Application**  
***Planning Act*, R.S.O. 1990, c. P.13, ss. 34(11) and 51(34)**  
**Municipal File Nos.: 25T-202203 and ZAH-22-021**  
**Municipal Folder No.: 2022 108394 00 PLAN (1104708)**  
**Dickenson Limited Partnership and Dickenson GP Inc.**  
**9451, 9517, 9569, 9579, 9593 & 9867 Dickenson Road and 1199 & 1205 Glancaster Road**

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We are legal counsel to Dickenson Limited Partnership and Dickenson GP Inc. ("**Broccolini**" or our "**Client**"), the Owner of the lands municipally known as 9451, 9517, 9569, 9579, 9593, and 9867 Dickenson Road and 1199 and 1205 Glancaster Road, in the City of Hamilton (the "**City**") (the "**Subject Property**"). The Subject Property is located at the southeast corner of Dickenson Road and Glancaster Road. The Subject Property is approximately 109 hectares in size, with approximately 743 metres of frontage along Dickenson Road West and 20 metres of frontage onto Arkwood Drive, a City of Hamilton owned right-of-way connecting to Glancaster Road. The lands currently contain three uninhabited single detached dwellings and agricultural operations. The Subject Property is intended for employment purposes, and is zoned Airside Industrial (M7) Zone and Airport Prestige Business (M11) Zone (subject to Holding Provision 37, which is related to availability of services).

We are writing on behalf of our Client to appeal their Zoning By-law Amendment and Draft Plan of Subdivision Applications to the Ontario Land Tribunal (the "**OLT**" or "**Tribunal**") because of the City's failure to make a decision within the statutory timeframe set out in the *Planning Act*, R.S.O. 1990, c. P.13 (the "**Planning Act**").

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### Zoning By-law and Draft Plan of Subdivision Applications

On November 11, 2021, Korsiak Urban Planning, Broccolini's land use planning consultant at that time, submitted applications to the City for a Zoning By-law Amendment (Municipal File No.: ZAH-22-021) ("**ZBA Application**") and a Draft Plan of Subdivision (Municipal File No.: 25T-202203) ("**DPS Application**") regarding the Subject Property. The ZBA and DPS Applications were deemed complete by the City on December 20, 2021. In November 2022, Broccolini replaced Korsiak Urban Planning with Landwise (formerly T. Johns Consulting Group Ltd.) as their land use planning consultant.

The purpose of the ZBA and DPS Applications is to lift Holding Provision 37 and to facilitate the redevelopment of the Subject Property with an industrial development comprising of four (4) development blocks totalling approximately 76.6 hectares of development area that may accommodate a gross floor area of approximately 295,326 square metres of employment uses (the "**Proposed Development**"). The Proposed Development also includes one (1) public road ("Street A" or "Arterial 1N), the creation of various blocks for stormwater management ponds and accommodating the natural heritage system, including a retained watercourse and wetland, a realigned and naturalized watercourse corridor and three blocks for woodland conservation and creation. In tandem with the DPS application, Broccolini has been appointed by the City to undertake an applicant-led Environmental Assessment for Arterial 1N that is currently ongoing.

Broccolini received written comments regarding the Applications from City staff in May 2021, and in November 2023 Broccolini made a second submission to address those initial comments. Broccolini and its consultants have met with City staff on several occasions to gain a better understanding of and to address staffs' comments. As a result of these meetings, Broccolini have comprehensively updated supporting studies through the second submission package. Comments in response to Broccolini's November 2023 second submission were received in March 2024 from City staff and external agencies, however comments from the City's development planning and transportation planning staff remain outstanding to-date. Notwithstanding Broccolini's efforts to work collaboratively and in the absence of a complete set of City of Hamilton and agency comments, the DPS and ZBA applications are at a standstill. Consequentially, Broccolini is unable to comprehensively understand outstanding issues, respond to or advance these applications to Council for consideration.

It is important to note that written comments have been received from the Niagara Peninsula Conservation Authority (the "**NPCA**") dated April 25, 2022, and February 28, 2024, in response to Broccolini's submissions. In their comments, the NPCA has confirmed that it has no objections to the realignment of the watercourses on the Subject Property, including wetland removal and replication, associated with the Proposed Development. However, despite the NPCA's non-objection to the proposal and numerous meetings with staff in an attempt to address this matter, City staff are of a differing opinion and have identified concerns with the development, particularly in regard to the proposed

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realignment of the existing watercourses and associated wetland removal and replication, as well as the removal of one cultural woodland and its associated replication.

Notice of Appeal

In light of the foregoing, we hereby appeal City Council's failure to make a decision respecting the ZBA and DPS Applications within the statutory time frames pursuant to Sections 34(11) and 51(34), respectively, of the *Planning Act*, R.S.O, 1990, c. P.13, as amended.

Enclosed with this notice of appeal is a completed Ontario Land Tribunal Appeal Form (A1), and cheques for the required fees (two cheques of \$1,100.00 each).

Notwithstanding the herein appeals, our Client remains committed to engaging with the City to resolve or narrow any outstanding issues, including through OLT-lead mediation.

Should you require any further information respecting this appeal, please do not hesitate to contact the undersigned, or my partner Naomi Mares at [nmares@airdberlis.com](mailto:nmares@airdberlis.com) or (647)426-2842.

Yours truly,

AIRD & BERLIS LLP



Alexander J. Suriano  
AJS/nh  
Encl.

cc: Client

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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)

<p><b>Municipal/Approval Authority Date Stamp</b></p>	<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):	
Dickenson Limited Partnership and Dickenson GP Inc.	
Email Address:	

Daytime Telephone Number:			Alternative Telephone Number:		
416-242-7772	ext.				
Mailing Address					
Unit Number:	Street Number:	Street Name:		P.O. Box:	
800	2680	Skymark Avenue			
City/Town:		Province:	Country:	Postal Code:	
Mississauga		ON	Canada	L4W 5L6	

Representative Information					
<input checked="" type="checkbox"/> I hereby authorize the named company and/or individual(s) to represent me					
Last Name:			First Name:		
Suriano			Alexander J.		
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):					
Aird & Berlis LLP					
Email Address:					
<a href="mailto:asuriano@airdberlis.com">asuriano@airdberlis.com</a>					
Daytime Telephone Number:			Alternative Telephone Number:		
437-880-6108	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	
<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>					



<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</i> , <i>Environmental Protection Act</i> , <i>Nutrient Management Act</i> , <i>Ontario Water Resources Act</i> , <i>Pesticides Act</i> , <i>Resource Recovery and Circular Economy Act</i> , <i>Safe Drinking Water Act</i> , <i>Toxics Reduction Act</i> , and <i>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</i> , <i>Mining Act</i> , <i>Lakes and Rivers Improvement Act</i> , <i>Assessment Act</i> , and <i>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:

n/a

Municipal Reference Number(s):

25T-202203 and ZAH-22-021 (Municipal Folder No. 2022 108394 00 PLAN (1104708))

List the reasons for your appeal:

Please see attached cover letter.

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

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

A: A decision of a Council or Approval Authority is:
<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
<b>And</b>
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 cover letter

<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 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**

**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 <a href="#">Section 3B Checklist(s)</a> located <a href="#">here</a> 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:

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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:

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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:

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Outline the relief requested:

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

**Section 7 – Filing Fee**

Required Fee			
Please see the attached link to view the <a href="#">OLT Fee Chart</a> .			
Total Fee Submitted: \$2,200 (Two cheques for \$1,100)			
Payment Method	<input type="checkbox"/>	Certified Cheque	<input type="checkbox"/>
		Money Order	<input checked="" type="checkbox"/>
		Lawyer's general or trust account cheque	
	<input type="checkbox"/>	Credit Card	
If you wish to pay the appeal fee(s) by credit card, please check the box above and OLT staff will contact you by telephone to complete the payment process upon receipt of the appeal form. <b>DO NOT INCLUDE YOUR CREDIT CARD INFORMATION ON THIS FORM. YOU WILL BE CONTACTED TO COMPLETE YOUR PAYMENT OVER THE PHONE.</b>			

If a request for a fee reduction is being requested, please pay the minimum filing fee for each appeal and complete/submit the 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)
Alexander J. Suriano		2024/07/16

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

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

### Section 9 – Filing Checklists (Mandatory)

#### Filing/Submitting your form and documentation

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

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

If the completed Section is:	You must file with the following:
Section 3A	Municipality or the Approval Authority/School Board

	<p>*If you are filing under the <i>Ontario Heritage Act</i>, including under <b>s. 34.1(1)</b>, please carefully review the specific section of that legislation to determine if your appeal needs to be filed with the Tribunal <b>in addition</b> to the Municipality or Approval Authority.</p>	
<p>Section 3A &amp; 3B or Section 4A or Section 4B or Section 6</p>	<p>Ontario Land Tribunal 655 Bay Street, Suite 1500 Toronto, ON M5G 1E5</p>	<p>Phone: 416-212-6349   1-866-448-2248 Website: <a href="http://www.olt.gov.on.ca">www.olt.gov.on.ca</a></p>
<p>Section 5</p>	<p><b>For the Areas of:</b> Dufferin County (Mono) Region of Halton Region of Peel Region of Niagara City of Hamilton</p> <p><b>File with:</b>  NIAGARA ESCARPMENT COMMISSION 232 Guelph Street, 3<sup>rd</sup> Floor Georgetown, ON L7G 4B1</p> <p>Phone: 905-877-5191 Fax: 905-873-7452 Website: <a href="http://www.escarpment.org">www.escarpment.org</a> Email: <a href="mailto:necgeorgetown@ontario.ca">necgeorgetown@ontario.ca</a></p>	<p><b>For the Areas of:</b> Bruce County Grey County Simcoe County Dufferin County (Mulmur, Melancthon)</p> <p><b>File with:</b>  NIAGARA ESCARPMENT COMMISSION 1450 7<sup>th</sup> Avenue Owen Sound, ON N4K 2Z1</p> <p>Phone: 519-371-1001 Fax: 519-371-1009 Website: <a href="http://www.escarpment.org">www.escarpment.org</a> Email: <a href="mailto:necowensound@ontario.ca">necowensound@ontario.ca</a></p>

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

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