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File No. 24175

November 14, 2024

By Courier

Ms. Janet Pilon, City Clerk
Hamilton City Hall
71 Main St West
Hamilton, ON., L8P 4Y5

Dear Ms. Pilon;

**Re: Appeals pursuant to sections 22(7), 34(11) & 51(34) of the Planning Act
Appeals of Official Plan Amendment, Zoning By-law Amendment and Plan of
Subdivision
Appeals filed on behalf of RCG Upper James Hamilton Inc. and Pure Upper James
Street Holdings ULC
2876 Upper James Street, Hamilton (the "Subject Property")
City of Hamilton File Numbers UHOPA-22-014 (OPA); ZAC-22-027 (ZBLA); 25T-
202204 (subdivision)**

We are the solicitors for RCG Upper James Hamilton Inc. ("RCG") and Pure Upper James Street Holdings ULC ("Pure"), collectively the registered owner of the Subject Property. By way of this letter and on behalf of our client, we hereby appeal the Official Plan Amendment, the Zoning By-law Amendment and the Plan of Subdivision applications to the Ontario Land Tribunal ("OLT" or "Tribunal"), pursuant to sections 22(7), 34(11) and 51(34), respectively, of the Planning Act. All three applications were deemed complete effective April 5, 2-22. Since then, more than 120 days have elapsed without the City of Hamilton making a decision on any of the applications.

The Subject Property is located on the west side of Upper James Street, approximately midway between Dickerson Road East and Airport Road East and lies immediately east of the John C. Munro International Airport. It is approximately 22.7 ha in area and is currently vacant. Since the original applications were first filed, RCG and Pure have revised the proposed development in response to comments received. The current version of the development proposes two industrial buildings totalling approximately 80,919 m² (Building A being approximately 42,627 m² and Building B being approximately 38,292 m²), parking for 260 cars, 35 bicycle parking

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spaces, 127 spaces for trailer parking and 144 loading bays. Appropriate provisions are also made for environmental protection.

The Subject Property is designated *Employment Areas* in Volume 1 of the UHOP and *Airport Reserve* in the Airport Employment Growth Area Secondary Plan. Accordingly, an Official Plan Amendment is required to designate the Subject Property to *Airport Prestige Business and Natural Open Space* to permit the proposed development. The Subject Property is zoned Airport Reserve (M9, H37) and is proposed to be rezoned to M11 Airport Prestige Business Zone (subject to current holding provision) and Conservation/Hazard Land Rural P7 Zone (for the environmental block). The proposed draft plan of subdivision is required to create the proposed industrial blocks and environmental blocks. The Subject Property is also identified as a Provincially Significant Employment Zone.

Consistency with the Provincial Planning Statement 2024 ("PPS")

The proposed development is within a settlement area, which is the focus of growth and development under the PPS. More particularly, the proposed development is consistent with policy 2.8.1 which requires the promotion of economic development and competitiveness through a number of means including:

- providing for an appropriate mix and range of employment, institutional, and broader mixed uses to meet long-term needs;
- providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;
- identifying strategic sites for investment, monitoring the availability and suitability of employment sites, including market-ready sites, and seeking to address potential barriers to investment;
- encouraging *intensification* of employment uses and compatible, compact, mixed-use development to support the achievement of *complete communities*; and
- addressing land use compatibility adjacent to *employment areas* by providing an appropriate transition to *sensitive land uses*.

Meets General Principles of Good Planning

The Subject Property has been identified at the provincial and municipal level as an area where employment development should occur. The proposed development meets the general principles of good planning by contributing significantly to long-term, orderly growth and efficient use of services in a planned employment area adjacent to an international airport.

Conclusion

For the forgoing reasons, and others to be provided at the hearing of the appeals, our client appeals its Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision applications to the OLT. In support of the appeals please find enclosed the following documents:

1. The draft plan of subdivision;
2. The OLT Appeal Form A1 (completed); and
3. Our firm's cheque in the amount of \$3,300 payable to the Minister of Finance, Ontario, representing the OLT's appeal fees for all three appeals (\$1,100/appeal).

Our client requests that the three appeals be heard together and that they be scheduled for a Case Management Conference as soon as possible. Thank you.

KAGAN SHASTRI DeMELO WINER PARK LLP



Ira T. Kagan

Enclos: [Appeal Form (A1), cheque for the appeal fees, draft plan of subdivision]

Cc: Clients
Mr. Peter Smith (Bousfields)



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):			
RCG Upper James Hamilton Inc. & Pure Upper James Street Holdings ULC (see solicitor's information below)			
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			
<input type="checkbox"/> I hereby authorize the named company and/or individual(s) to represent me			
Last Name:		First Name:	
Kagan		Ira	
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation):			
KAGAN SHASTRI DeMELO WINER PARK LLP			
Email Address:		LSO Number (if applicable):	
<u>IKAGAN@KSLLP.CA</u>		30712G	
Daytime Telephone Number:		Alternative Telephone Number:	
416-368-2100	ext. 226	437-781-9549	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
	188	AVENUE ROAD	
City/Town:	Province:	Country:	Postal Code:
TORONTO	ONTARIO	CANADA	M5R 2J1
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.			
<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.			

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:
2876 Upper James Street, Hamilton
Municipality:
Hamilton
Upper Tier (Example: county, district, region):
N/A

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	Plan of subdivision	Planning Act	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
X	Appeal of <i>Planning Act</i> matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances	3A
<input type="checkbox"/>	Appeal of <i>Development Charges, Education Act, Aggregate Resources Act, Municipal Act</i> matters	3A
<input type="checkbox"/>	Appeal of or objection to <i>Ontario Heritage Act</i> matters under subsections 29, 30.1, 31, 32, 33, 40.1 and 41	3A
<input type="checkbox"/>	Appeal of <i>Planning Act</i> (subsections 33(4), 33(10), 33(15), 36(3)), <i>Municipal Act</i> (subsection 223(4)), <i>City of Toronto Act</i> (subsection 129(4)) and <i>Ontario Heritage Act</i> (subsections 34.1(1), 42(6)) matters	3A & 3B
<input type="checkbox"/>	Appeal of <i>Clean Water Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Pesticides Act, Resource Recovery and Circular Economy Act, Safe Drinking Water Act, Toxics Reduction Act, and Waste Diversion Transition Act</i> matters	4A
<input type="checkbox"/>	Application for Leave to Appeal under the <i>Environmental Bill of Rights</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:	
N/A – industrial development	
Municipal Reference Number(s):	
UHOA-22-014 (OPA); ZAC-22-027 (ZBLA); 25T-202204 (subdivision)	
List the reasons for your appeal:	
<p>Please see the attached cover letter.</p>	
Has a public meeting been held by the municipality? Yes X 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> 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 see the attached cover letter.

Oral/Written submissions to council
Did you make your opinions regarding this matter known to council?
<input type="checkbox"/> Oral submissions at a public meeting of council
<input checked="" type="checkbox"/> Written submissions to council
<input type="checkbox"/> Not applicable

Related Matters
Are there other appeals not yet filed with the Municipality?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there other matters related to this appeal? (For example: A consent application connected to a variance application).
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, please provide the Ontario Land Tribunal Case Number(s) and/or Municipal File Number(s) for the related matters:

Section 3B – Other Planning Matters

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.

Identify the portions of the instrument you are seeking to appeal:
Identify the grounds you are relying on for leave to appeal. Your grounds should include reasons why there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind could have made the decision; and why the decision could result in significant harm to the environment:
Outline the relief requested:
There are required documents and materials to be submitted to the Ontario Land Tribunal (OLT) based on the type of legislation and section you are filing under. Please see the Section 4B Checklist(s) located here and submit all documents listed on the checklist.

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

Appeal Specific Information:
Development Permit Application File No:
Name of Applicant for Development Permit:
Reasons for Appeal: Outline the nature and reasons for your appeal. Specific planning, environmental and/or other reasons are required. (The Niagara Escarpment Plan is available on the Niagara Escarpment Commission's website (www.escarpment.org))

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

Owner			
Last Name:		First Name:	
Email Address:			
Daytime Telephone Number:		Alternative Telephone Number:	
		ext.	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City/Town:	Province:	Country:	Postal Code:

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

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

Is the Proposal the Subject of a Current Application? Please identify:
<input type="checkbox"/> Development Permit under <i>Niagara Escarpment Planning and Development Act</i>
<input type="checkbox"/> The Planning Act (Official Plan or Zoning By-law Amendment)

<input type="checkbox"/> The Aggregate Resources Act (License)
<input type="checkbox"/> Committee of Adjustment (Minor Variance)
<input type="checkbox"/> Land Division Committee (Severance)
<input type="checkbox"/> Other:

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

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

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

Justification and Rationale (Including Reasons, Argument and Evidence in Support of the Amendment) (See Niagara Escarpment Plan Amendment Guidelines)
The justification submitted with the application should address the following: <ol style="list-style-type: none">1. Analysis of how the proposed amendment is consistent with the <i>Niagara Escarpment Planning and Development Act</i>, the Niagara Escarpment Plan, and shall be consistent with other relevant Provincial plans.2. A justification which includes the rationale for the amendment, as well as reasons, arguments or evidence in support of the change to the Plan proposed through the amendment.

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*.

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 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: \$ 3,300						
Payment Method	<input type="checkbox"/>	Certified Cheque	<input type="checkbox"/>	Money Order	X	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 .						
<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)
Ira T. Kagan		2024/11/14
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 *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/Submmiting your form and documentation
You must file your Appeal Form with the appropriate authority(s) by the filing deadline.

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

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

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

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

