

**Environment and Land Tribunals
Ontario**

Local Planning Appeal Tribunal

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Toronto ON M5G 1E5
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**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

Tribunal d'appel de l'aménagement
local

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PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Chelten Developments Inc.
Subject: Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment
Existing Designation: Residential – Medium Density with site-specific policy
Proposed Designated: Mixed Use Corridor
Purpose: To permit the development of a 6-storey mixed use building with commercial and office uses on ground floor with 50 residential units on floors above
Property Address/Description: 92 Plains Road East
Municipality: City of Burlington
Approval Authority File No.: 505-02/16
OMB Case No.: PL180373
OMB File No.: PL180373
OMB Case Name: Chelten Developments Inc. v. Burlington (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Chelten Developments Inc.
Subject: Application to amend Zoning By-law No. 2020 - Refusal or neglect of the City of Burlington to make a decision
Existing Zoning: RM1-346
Proposed Zoning: MXG-exception
Purpose: To permit the development of a 6-storey mixed use building with commercial and office uses on ground floor with 50 residential units on floors above
Property Address/Description: 92 Plains Road East
Municipality: City of Burlington
Municipality File No.: 520-03/16
OMB Case No.: PL180373
OMB File No.: PL180374

NOTICE OF PREHEARING CONFERENCE

The Local Planning Appeal Tribunal will conduct a prehearing conference respecting this matter.

TIME AND PLACE OF PREHEARING CONFERENCE

A prehearing conference will be held

Assessment Review Board - Board of Negotiation - Conservation Review Board - Environmental Review Tribunal - Local Planning Appeal Tribunal
Niagara Escarpment Hearing Office - Office of Consolidated Hearings – Mining and Land Tribunal

at: 10:00 AM

on: Tuesday January 22, 2019

**at: Municipal Building
Room 247
426 Brant Street
Burlington, ON L7R 3Z6**

The Tribunal has set aside **1 day** for this conference.

If you do not attend the prehearing conference, the Local Planning Appeal Tribunal may proceed in your absence and you will not be entitled to any further notice of these proceedings. The Tribunal may finalize the list of appellants, parties and/or participants at this prehearing conference, and may order that no additional appellants, parties and/or participants be added or included in this proceeding, without leave of the Tribunal.

PURPOSE OF PREHEARING CONFERENCE

The conference will deal with preliminary and procedural matters, including the following:

- **Identification of parties** - these persons have the right to participate throughout by presenting evidence, questioning witnesses, and making final arguments. In order for the Tribunal to determine your status for the hearing, you or your representative should attend the prehearing conference and ask to be added as a party. Groups, whether incorporated or not, who wish to become parties should name a representative. Parties do not need to be represented by lawyers or agents.
- **Identification of participants** - persons who do not wish to participate throughout the hearing may attend the hearing and make a statement to the Tribunal. Such persons should also attend the prehearing conference.
- **Identification of issues.**
- **Possibility of settlement of any or all of the issues** – the panel will explore with the parties whether the case before the Tribunal and the issues in dispute are matters that may benefit from the assistance of a mediation meeting conducted by a Member of the Tribunal. Mediation is a voluntary process of negotiation that encourages all sides in a dispute to get a better understanding of each other's positions and fully explore and consider options for a mutually acceptable settlement of all or some of the issues in dispute. The panel may direct, upon consent of the parties, that some or all of the issues in dispute proceed to mediation. Where mediation is directed, a different Member of the Tribunal would conduct the mediation.
- **Start date of the hearing.**
- **Duration of the hearing.**
- **Directions for pre-filing of witness lists, expert witness statements and written evidence.**
- **The hearing of motions.**
- **Such further matters as the Tribunal considers appropriate.**

Everyone present should come prepared to consider specific dates for proceedings in this matter.

EVIDENCE

Evidence or formal statements may also be heard at the prehearing conference in an attempt to settle the matters in dispute. Note that even if no settlement is reached the Tribunal may make a final decision on the evidence it received.

All parties or their representatives should attend the prehearing conference.

Pour recevoir des services en français, veuillez communiquer avec la Division des audiences au (416) 212-6349, au moins 20 jours civils avant la date fixée pour l'audience.

We are committed to providing accessible services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible by emailing ELTO@ontario.ca. If you require documents in formats other than conventional print, or if you have specific accommodation needs, please let us know so we can make arrangements in advance. Please also identify any assistance you may require in the event of an emergency evacuation.

DATED at Toronto, this 12th day of July, 2018.

Mary Ann Hunwicks
Registrar

LOCAL PLANNING APPEAL TRIBUNAL RULES ON ADJOURNMENTS

17.01 Hearing Dates Fixed Hearing events will take place on the date set unless the Tribunal agrees to an adjournment. Adjournments will not be allowed that may prevent the Tribunal from completing and disposing of its proceedings within any applicable prescribed time period.

17.02 Requests for Adjournment if All Parties Consent If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the written consents of all parties. However, the Tribunal may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent. The consenting parties are expected to present submissions to the Tribunal on the application of any prescribed time period to dispose of the proceeding.

17.03 Requests for Adjournment without Consent If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 15 days before the date set for the hearing event. If the reason for an adjournment arises less than 15 days before the date set for the hearing event, the party must give notice of the request to the Tribunal and to the other parties and serve their motion materials as soon as possible. If the Tribunal refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

17.04 Emergencies Only The Tribunal will grant last minute adjournments only for unavoidable emergencies, such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Tribunal must be informed of these emergencies as soon as possible.

17.05 Powers of the Tribunal upon Adjournment Request The Tribunal may,

- (a) grant the request;
- (b) grant the request and fix a new date or, where appropriate, the Tribunal will schedule a prehearing or case management conference on the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) grant an indefinite adjournment, if the request is made by a party and is accepted by the Tribunal as reasonable and the Tribunal finds no substantial prejudice to the other parties or to the Tribunal's schedule. In this case a party must make a request, or the Tribunal on its own initiative may direct, that the hearing be rescheduled or resumed as the case may be;
- (g) convert the scheduled date to a mediation or prehearing or case management conference;
- (h) issue a Notice of Postponement or a Notice of Resumption; or
- (i) make any other appropriate order.

April 3, 2018



Local Planning Appeal Tribunal
Sample Procedural Order

ISSUE DATE:

CASE NO(S). PL#####

PROCEEDING COMMENDED UNDER (*Specify: statute and provision under which proceeding was commenced*)

Applicant(s)/Appellant(s):	(specify)
Subject	(specify)
Property Address/Description	(specify)
Municipality:	(specify)
Municipal File No.:	(specify)
LPAT Case No.:	(specify PL number)
LPAT File No.:	(specify associated file PL number(s) if any)
LPAT Case Name:	(specify)

(Repeat the above heading as needed for each provision(s) under which the proceeding is commenced)

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on.....,..... (year) at ...a.m./p.m. atin the municipality of[Optional:..An evening session will be held on]

3. The length of the hearing will be aboutdays.

4. The parties and participants identified at the prehearing conference are:

5. The Issues are:

There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

7. [Optional] Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the municipal Clerk.

8. [Optional] A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at leastcalendar days before the hearing.

9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [12]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.

10. [Optional] A [witness] [participant] must provide to the Tribunal and the parties a [witness] [participant] statement at least calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [12].

12. On or before[a minimum of 30 calendar days before the hearing date], the parties shall provide copies of their [witness and] expert witness statements to the other parties and to the Clerk of

13. [Optional] On or before, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal.

(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.)

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is [not] seized.

So orders the Tribunal.

BEFORE:

Name of Member)
)
)

Date:

TRIBUNAL REGISTRAR

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at _____.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: *A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

The order of examination of witnesses: *is usually direct examination, cross-examination and re-examination in the following way:*

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Tribunal;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Tribunal.

LOCAL PLANNING APPEAL TRIBUNAL RULES ON DOCUMENTS, EXHIBITS, FILING, SERVICE

7.01 Form of Documents Unless otherwise directed by the Tribunal, every document filed or introduced by a party or participant in a proceeding shall be legible and prepared on letter size paper (8 ½" x 11"), except for large documents such as plans or surveys, and, where bound together with other documents, shall have each page numbered consecutively, throughout the entire text or within tabs, including any graphic content. Wherever possible, an electronic copy of the document must also be filed with the Tribunal, identically numbered as the paper document.

7.02 Other Exhibits Large graphic or other such types of visual evidence should not be glued to foam or other boards. They shall be on paper and be removed from the boards following the hearing event, and folded to 8 ½" x 11". Three-dimensional models must be photographed and the photographs must be introduced with the model. Visual evidence must be reviewed by the other parties before the hearing event or by an earlier date if set out in a procedural order.

7.03 Copies of Documents for Parties and the Municipal Clerk A party who intends to introduce a document as evidence at a hearing event shall provide a copy of the document to all the parties at the beginning of the proceeding or by an earlier date if that is required by the terms of a procedural order or otherwise directed by the Tribunal. If the document is an official plan, those parts of the plan to be referred to at the hearing event should be distributed to the parties, and a copy of the entire plan must be made available to the Tribunal Member(s). If the Tribunal orders that the clerk of the municipality keep copies of documents for public inspection, they do not need to be certified copies, unless a party objects that they are not authentic copies.

7.04 Prefiling of Witness Statements and Reports If a hearing is expected to last more than 5 days, the Tribunal may require that parties calling expert or professional witnesses serve on the other parties and file with the clerk of the municipality any expert witness statements and reports prepared for the hearing, at least 30 days in advance of the commencement of the hearing, unless otherwise directed by the Tribunal. The Tribunal may in its discretion, or at the request of a party, also make this prefiling order for hearings expected to last fewer than 5 days. The expert witness statement must contain:

- (a) an executed acknowledgment of expert's duty form (attached to these Rules) and expert's qualifications;
- (b) the issues the expert will address, their opinions on these issues, the reasons that support their opinions and their conclusions; and
- (c) a list of the reports or documents, whether prepared by the expert or by someone else, that the expert will refer to at the hearing.

The expert's complete report may be filed instead of this statement if it contains the required information.

An expert may not be permitted to testify if this statement or report is not served on all parties and filed with the clerk of the municipality when so directed by the Tribunal.

7.05 Duty of the Expert Witness It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge, either prior to (by signing the acknowledgment form attached to the Rules) or at the proceeding, that they are to:

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise;
- (c) provide such additional assistance as the Tribunal may reasonably require to determine a matter in issue; and
- (d) acknowledge that these duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

7.06 Other Witnesses The Tribunal may also require that a witness or a participant who is not presenting expert evidence provide a witness or participant statement. A witness or participant statement should contain (a) a short written outline of the person's background experience, and interest in the matter, (b) a list of the issues that they will discuss, and (c) a list of reports that they will rely on at the hearing. A participant statement should also briefly outline the evidence to be presented. The Tribunal may decline to allow the witness or participant to testify if this statement is required by the Tribunal and has not been provided to the other parties.

7.07 Amendment of Documents Documents filed with the Tribunal can only be amended with the consent of the parties or by a Tribunal Order. The Tribunal may require that the person requesting an amendment do so by way of a motion under Rule 10.

7.08 Copies of Tribunal Documents A person may examine any document filed with the Tribunal and copy it after paying the Tribunal's fee, unless a statute, a Court Order, a Tribunal Order or these Rules provide otherwise. Persons, including participants in the proceeding wishing to review expert witness statements and reports, may also do so at the Clerk's office when the Tribunal directs that witness statements or reports are to be filed at the municipality.

7.09 Return of Exhibits Exhibits of all types introduced at a hearing will be kept for 180 days after the Tribunal decision issues. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Tribunal agrees. If no such request is made, the exhibit becomes the property of the Tribunal and may be archived.

7.10 Service by Personal Service or Electronic Service Where any document is required to be served or filed, including the one commencing a proceeding or a motion or providing notice, it shall be served by personal service, registered mail or electronically (unless a statute or the Tribunal requires another method of service) and shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented, to that party directly, where that party has provided an address for service and/or an e-mail address;
- (c) where that party is a corporation and is not represented, to the corporation directly, to the attention of an individual with apparent authority to receive the document;
- (d) where served on or filed with a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the document; or
- (e) where served on or filed with the Tribunal, to the Registrar.

Subject to Rule 7.11, if a document is served by e-mail, then service is effective on the date of service.

7.11 If Served Electronically After 4:30 p.m. Any document served electronically after 4:30 p.m. is deemed to have been served on the next business day.

7.12 Proof of Electronic Service A confirmation printout received by the sender is proof of the full transmission and receipt of the electronic service.

7.13 No Hard Copy Needed A hard copy of an electronic document need not be sent by another means of transmission unless requested, and may then be sent by regular mail.

April 3, 2018

LOCAL PLANNING APPEAL TRIBUNAL RULES ON PREHEARING CONFERENCES

19.01 Prehearing Conference At the request of a party, on its own initiative or as may be required by law, the Tribunal may direct parties to participate in a prehearing conference conducted by a Member, which can include settlement conferences, motions or preliminary hearing matters, in order to:

- (a) identify the parties and participants and determine the issues raised by the appeal;
- (b) identify facts or evidence the parties may agree upon or on which the Tribunal may make a binding decision;
- (c) obtain admissions that may simplify the hearing, which may include the examination of persons by the Tribunal as part of the conference;
- (d) provide directions for exchange of witness lists, witness statements, expert witness statements and reports, for meetings of experts to address the disclosure of information, including the disclosure of the information that was not provided to the Municipality before Council made its decision that is the subject of the appeal, and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (h) address the production and cost sharing of joint document books; and
- (i) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

19.02 Sample Procedural Order and Meeting Before Prehearing Conference The Tribunal may provide a sample procedural order to the parties before the prehearing conference. The parties are expected to meet before the prehearing conference to consider the matters set out in Rule 19.01 and present recommendations to the Tribunal for the conduct of the hearing. A sample procedural order is listed in the index of forms on the final page of these Rules.

19.03 Serving Notice of a Conference The Tribunal will give the applicant a Notice of Conference that provides the time and place of the prehearing conference. The applicant must serve this on those persons entitled to notice of the conference and provide an affidavit to the Tribunal, at or prior to the conference, to prove service of the notice.

19.04 Tribunal Member Presides The Associate Chair will assign at least one Tribunal Member to conduct the conference.

19.05 Public Attendance at a Prehearing Conference A prehearing conference held in person will be open to the public. A prehearing conference held by electronic hearing will be open to the public where practical. Despite the general principle of public open sessions, where circumstances prevail that may require confidentiality, in the discretion of the presiding Member, part or all of the conference may be conducted *in camera*.

19.06 Conversion From One Procedure to Another The Tribunal Member may, at any time, conduct a procedural discussion or a preliminary hearing and may convert from one to another. The Tribunal will state in the notice of a prehearing conference that the parties are expected to arrive prepared for a procedural and settlement conference as well as a preliminary hearing, where evidence or formal statements or submissions may be heard. Even if no settlement is reached, the Tribunal may proceed to make a final decision on any evidence received during the conference.

19.07 Results of Failure to Attend a Conference If a party fails to attend the conference in person or by authorized representative, the Tribunal may proceed without that party. The non-attending party is not entitled to notice of subsequent hearing events in the proceedings.

19.08 Tribunal Order Following The Member conducting the prehearing conference will issue an order that may decide any of the matters considered at the conference and provide procedural directions for any subsequent hearing event.

19.09 Hearing Member Bound The Member conducting the hearing or any subsequent hearing event is bound by the order resulting from the prehearing conference unless the Member is satisfied that there is good reason to vary the order.

19.10 Methods of Holding Hearing Events The Tribunal may direct in an order following a conference that hearing events in a proceeding be held by a combination of written, electronic or oral hearing events.

April 3, 2018