

January 21, 2020

To Whom It May Concern

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File No. 18948.00001

**Re: NOTICE OF CASE MANAGEMENT CONFERENCE  
Local Planning Appeal Tribunal Case No. PL190468  
Appeals by Spruce Partners Inc. & Amico Properties Inc.**

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We are solicitors for Spruce Partners Inc. and Amico Properties Inc., owners of land at 1157 – 1171 North Shore Boulevard East, in the City of Burlington (the “Applicant”). The Applicant has appealed their application for an Official Plan Amendment and a Zoning By-law Amendment to the Local Planning Appeal Tribunal (the “Tribunal”) on the basis of the City of Burlington’s failure to adopt of the proposed OPA Application within 120 days and the City’s failure to make a decision on the Zoning By-Law Amendment within 120 days.

The Tribunal has scheduled a Case Management Conference in this matter for February 11, 2020 for a duration of one day. We are required by the Tribunal to circulate notice of this case management conference to the proximate landowners and other interested parties.

As such we are enclosing the following materials:

1. Notice of Case Management Conference, February 11, 2020;
2. Extracts of the Tribunal’s *Rules of Practice and Procedure*;
3. A description of the subject land;
4. An explanation of the purpose and effect of the proposed Official Plan Amendment and the proposed Zoning By-law;
5. A key map showing the subject land.

If you anticipate seeking party/participant status in connection with this matter or otherwise have any questions with respect to this notice, please contact the undersigned or the Local Planning Appeal Tribunal Case Manager, Ryan Co, at (416) 326-8946.

Yours truly,  
WEIRFOULDS LLP



Denise Baker

Encls.

**Environment and Land Tribunals  
Ontario**

Local Planning Appeal Tribunal

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**Tribunaux de l'environnement et de  
l'aménagement du territoire Ontario**

Tribunal d'appel de l'aménagement  
local

655 rue Bay, suite 1500  
Toronto ON M5G 1E5  
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Site Web: www.elto.gov.on.ca



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

Applicant and Appellant: Spruce Partners Inc. & Amico Properties Inc.  
Subject: Request to amend the Official Plan - Failure of City of Burlington to adopt the requested amendment  
Existing Designation: Downtown Residential Medium and High Density  
Proposed Designated: Downtown Residential Medium and High Density  
Purpose: To permit a seniors living campus  
Property Address/Description: 1157 - 1171 North Shore Boulevard East  
Municipality: City of Burlington  
Approval Authority File No.: 505-05/18  
LPAT Case No.: PL190468  
LPAT File No.: PL190468  
LPAT Case Name: Amico Properties Inc. v. Burlingotn (City)

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

Applicant and Appellant: Spruce Partners Inc. & Amico Properties Inc.  
Subject: Application to amend Zoning By-law No. 2020 - Refusal or neglect of City of Burlington to make a decision  
Existing Zoning: DRH – Downtown High Density Residential  
Proposed Zoning: DRH-X - Downtown High Density Residential with site-specific exception  
Purpose: To permit a seniors living campus  
Property Address/Description: 1157 - 1171 North Shore Boulevard East  
Municipality: City of Burlington  
Municipality File No.: 520-07/18  
LPAT Case No.: PL190468  
LPAT File No.: PL190469

**NOTICE OF CASE MANAGEMENT CONFERENCE**

The Local Planning Appeal Tribunal (“Tribunal”) will conduct a Case Management Conference (“CMC”) for this matter.

This CMC will be held:

**AT: 10:00 AM**

**ON: Tuesday, February 11, 2020**

**AT: Halton Provincial Offence Office  
Hearing Room 202  
4085 Palladium Way  
Burlington, ON L7M 2A6**

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

Hearing dates are firm – adjournments will not be granted except in the most serious circumstances, and only in accordance with the Tribunal's *Rules of Practice and Procedure* ("Rules") on adjournments (Rule 17, attached).

If you do not attend the CMC, the 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 CMC, and may order that no additional appellants, parties and/or participants be added or included in this proceeding, without leave of the Tribunal.

#### **THE CASE MANAGEMENT CONFERENCE**

The purpose of the CMC is set out in Rule 19.1 (attached) of the Rules. The CMC will deal with preliminary issues, that include 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 CMC 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 provide a written statement to the Tribunal.
- **Identification of issues.**
- **Possibility of settlement and/or mediation 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 mediation. Mediation is a voluntary process that encourages all sides in a dispute to get a better understanding of each other's positions and fully explore and negotiate 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.
- **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.**
- **Draft Procedural Order** – parties are expected to meet before the CMC to consider a draft Procedural Order, as per Rule 19.2 (see Schedule A: Sample Procedural Order). An electronic version is also available on the Tribunal website.
- **Such further matters as the Tribunal considers appropriate.**

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

All persons who wish to participate in this matter are expected to be prepared should the Tribunal convert the CMC to a settlement conference, a motion for procedural directions, or a preliminary hearing, where evidence or formal statements or submissions may be heard. Even when no settlement is reached, the Tribunal may proceed to make a final decision on any evidence received during the conference.

#### **PARTY OR PARTICIPANT STATUS REQUEST:**

Persons other than the appellant(s), applicant, municipality or approval authority who wish to participate in the proceeding, either as a party or as a participant, are expected to file a written status request with the Tribunal to outline their interest in the proceeding.

A written status request should be provided at least 10 days in advance of the CMC to:

- The assigned Tribunal Case Coordinator Ryan Co at [Ryan.Co@ontario.ca](mailto:Ryan.Co@ontario.ca).
- The municipality and the approval authority on the same day as it is emailed to the Tribunal Case Coordinator.
- The Applicant and the Appellant(s) on the same day as it is emailed to the Tribunal Case Coordinator.

The contact information for the parties is included in Schedule B.

A person must also bring a paper copy of their status request to the CMC to file with the Tribunal Member assigned to this matter.

The written status request will be reviewed and considered by the presiding Member at the CMC. It will also assist the Tribunal in organizing the hearing event. **Attendance by the requestor, or their representative, at the CMC is required for all status requests.**

A person who is not granted party or participant status by the Tribunal at the CMC is not permitted to actively participate in any further hearing event that is convened by the Tribunal for this appeal.

## **Helpful links**

A Party/Participant Status Request Form is available on the Tribunal's website (<https://elto.gov.on.ca/tribunals/lpat/forms/>) and may be used to assist with the preparation of the request.

Please see Schedule C for relevant excerpts from the Tribunal's Rules.

## **FURTHER DIRECTIONS**

Tribunal proceedings, including the CMC, are open to the public and all documents filed in a proceeding will be included in the Tribunal's public file (except those documents that may be deemed confidential in accordance with section 33(3) of the *Local Planning Appeal Tribunal Act, 2017*, as amended).

The Tribunal shall issue a disposition following the CMC that will set out the directions of the Tribunal. A copy of this decision may be obtained from the Tribunal's website (<https://elto.gov.on.ca/tribunals/lpat/e-decisions/>) by referencing the above case number.

*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](mailto: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 16th day of January, 2020.

Evelyn Dawes  
Deputy Registrar

## SCHEDULE A

### Sample Procedural Order

#### Purpose of the Procedural Order

Case Management Conferences are scheduled by the Tribunal to organize the hearing. This sample procedural order is provided to identify who may participate in the hearing, the issues in dispute, and the matters that are required to be carried out before the hearing. The attachment to this sample procedural order explains the meaning of a number of terms in the sample procedural order, such as a party or a participant.

The Tribunal recommends that the appellant, municipality, the applicant (if applicable), or those who wish to seek party status in this proceeding, meet to discuss this sample procedural order before the date of the Case Management Conference and try to identify the issues and process they want the Tribunal to Order following the conference. The Tribunal will hear submissions on the content of this procedural order at the case management conference and issue a procedural order at a later date.

If you are not represented by a lawyer, you should prepare by reviewing the Appeal Guide matching your appeal type and the Tribunal's Rules from the Tribunal, which are available on the Tribunal's website <insert link>.

**ISSUE DATE:**

**CASE NO(S):**

**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

1. The hearing will begin on \_\_\_\_\_ (*year*) at \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_ in the municipality of \_\_\_\_\_ . [Optional: An evening session will be held on \_\_\_\_\_ .]

.....]

2. The length of the hearing will be about \_\_\_\_\_ days. The length of the hearing may be shortened as issues are reordered as settlement is achieved.
3. The parties and participants identified at the case management conference are set out in Attachment 1 (see the sample procedural order for the meaning of these terms).
4. The Issues are set out in the Issues List attached as Attachment 2. 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.
5. The order of evidence shall be as set out in Attachment 3 to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.
6. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.

#### **Requirements Before the Hearing**

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the municipal clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before \_\_\_\_\_ (insert date). A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and the area of expertise in which the witness is prepared to be qualified.
8. Expert witnesses in the same field shall have a meeting on or before \_\_\_\_\_ 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.
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. 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]. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in section [12].
11. 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 municipal Clerk of \_\_\_\_\_.
12. On or before \_\_\_\_\_, a participant shall provide copies of their written participant statement to the other parties. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
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 seven (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 written evidence of a witness 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. The parties shall prepare and file a hearing plan with the Tribunal on or before \_\_\_\_\_ with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at



its discretion, change or alter the hearing plan at any time, prior to, or in the course of the hearing.

18. Documents may be delivered by personal delivery, facsimile or registered or certified mail or email, or otherwise as the Tribunal may direct. The delivery of documents by fax and email 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.

19. 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:

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TRIBUNAL REGISTRAR

## Attachment to Sample Procedural Order

### 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 case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual, group or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Subsection 33.2 of the *Local Planning Appeal Tribunal Act* states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

**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.

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 wishes to address and the submission of the participant on those issues; and a list of reports, if any, which the participant wishes to refer to in their statement.

### **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.

## **SCHEDULE B**

### **Contact information of statutory parties:**

#### APPLICANT/APPELLANT

Spruce Partners Inc. & Amico Properties Inc.  
117 George Street  
Oakville, ON L6J 3B8

Denise Baker  
WeirFoulds LLP  
10-1525 Cornwall Rd.  
Oakville, ON L6J 0B2  
dbaker@weirfoulds.com

#### MUNICIPALITY

City of Burlington  
P.O. Box 5013 426 Brant Street  
Burlington, ON L7R 3Z6  
<<CONTACT EMAIL>>

Blake Hurley  
City of Burlington  
P.O. Box 5013 426 Brant Street  
Burlington, ON L7R 3Z6  
blake.hurley@burlington.ca

## SCHEDULE C

**EXCERPT FROM LOCAL PLANNING APPEAL TRIBUNAL'S RULES OF PRACTICE AND PROCEDURE, ON DOCUMENTS, EXHIBITS, FILING, SERVICE, ROLES OF PARTIES, ADJOURNMENTS AND CASE MANAGEMENT CONFERENCES. THE FULL DOCUMENT IS AVAILABLE ON THE TRIBUNAL'S WEBSITE.**

### RULE 7

#### DOCUMENTS, EXHIBITS, FILING, SERVICE

**7.1 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.

**7.2 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.

**7.3 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.

**7.4 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.

**7.5 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.

**7.6 Other Witnesses** The Tribunal may also require that a witness who is not presenting expert evidence provide a witness statement. A witness 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. The Tribunal may decline to allow the witness to testify if this statement is required by the Tribunal and has not been provided to the other parties.

**7.7 Participant Statements** A person who wishes to participate in a proceeding as a participant, shall file a written participant statement that sets out their position on the matter and issues of the proceeding, together with an explanation of their reasons in support of their position. A participant may only make submissions to the Tribunal in writing unless participant status was conferred by the Tribunal in a procedural order that was issued prior to the effective date of these Rules. In that case, the person conferred participant status may make an oral submission to the Tribunal and be cross-examined by parties on the content of their oral submission or the content of their written participant statement pursuant to the procedural order. In all circumstances, the Tribunal may direct a participant to pre-file their statement in advance of a hearing event with the Tribunal and all of the parties to the proceeding.

**7.8 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.

**7.9 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.

**7.10 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.

**7.11 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, or assigned administrative staff.

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

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

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

## RULE 8

### ROLE AND OBLIGATIONS OF A PARTY

**8.1 Role and Obligations of a Party** Subject to Rule 8.2 below, a person conferred party status to a proceeding before the Tribunal may participate fully in the proceeding, and by way of example may:

- (a) Identify issues raised in a notice of appeal for the approval of the Tribunal;
- (b) Bring or respond to any motion in the proceeding;
- (c) Receive copies of all documents and supporting information exchanged, relied upon or filed in connection with any hearing event conducted in the proceeding;
- (d) Present opening and closing submissions at the hearing;
- (e) Present and examine witnesses and cross-examine witnesses not of like interest;
- (f) Claim costs or be subject to a costs award when ordered by the Tribunal; and
- (g) Request a review of a Tribunal decision or order as set out in Rule 25.

**8.2 Power of the Tribunal to Add or Substitute Parties** The Tribunal may add or substitute a party to a proceeding when that person satisfies any applicable legislative tests necessary to be a party and their presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issues in the proceeding.

**8.3 Non-Appellant Party** A party, who is not an Appellant in a proceeding, but is conferred party status by the Tribunal, may not raise or introduce new issues in the proceeding. A non-Appellant party may only participate in the proceeding by sheltering under an issue raised in an appeal by an Appellant party and may participate fully in the proceeding to the extent that issue remains in dispute. A non-Appellant party has no independent status to continue an appeal that is withdrawn by an Appellant party, or is otherwise resolved or determined by the Tribunal.

**8.4 Common Interest Class** Where the Tribunal is of the opinion that more than one party is of common interest with another party or other parties, the Tribunal may, on its own initiative or on the request of any party, appoint a person of that class of parties to represent the class in the proceeding.



## RULE 17

### ADJOURNMENTS

**17.1 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.

**17.2 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.

**17.3 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.

**17.4 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.

**17.5 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 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 Tribunal finds no substantial prejudice to the other parties or to the Tribunal's schedule and the Tribunal concludes the request is reasonable for the determination of the issues in dispute. 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 case management conference;
- (h) issue a Notice of Postponement, in the event the proceeding is an appeal

of a Planning Act matter subject to O. Reg. 102/18 under LPATA; or  
(i) make any other appropriate order.

## RULE 19

### CASE MANAGEMENT CONFERENCES

**19.1 Case Management Conference** At the request of a party, on its own initiative or as may be required by LPATA, the Tribunal may direct parties to participate in a case management 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) provide directions to the parties to file a hearing plan to outline how the hearing will proceed, the order of witnesses, or the anticipated time for submissions to ensure that the Tribunal sets aside sufficient time in its hearing calendar to dispose of the issues;
- (f) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (g) 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;
- (h) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (i) address the production and cost sharing of joint document books; and
- (j) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

**19.2 Sample Procedural Order and Meeting Before Case Management Conference** The Tribunal may provide a sample procedural order to the parties before the case management conference. The parties are expected to meet before the case management conference to consider the matters set out in Rule 19.1 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.

**19.3 Serving Notice of a Conference** The Tribunal will issue directions to serve a Notice of Case Management Conference that provides the time and place of the conference. The person or municipality who is issued the direction must serve this notice 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.

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

**19.5 Public Attendance at a Case Management Conference** A case management conference held in person will be open to the public. A case management 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*.

**19.6 Conversion From One Procedure to Another** The Tribunal Member may, at any time, conduct a procedural discussion, initiate a motion, inquire into a preliminary matter, or convert the conference into a hearing. The Tribunal will state in the notice of a case management 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.

**19.7 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.

**19.8 Tribunal Order Following** The Member conducting the case management 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.

**19.9 Hearing Member Bound** The Member conducting the hearing or any subsequent hearing event is bound by the order resulting from the case management 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.

September 3, 2019

### Description of the Site

The Site is municipally known as 1157-1171 North Shore Boulevard East, Burlington is shown on the below key map. The Site is approximately 1.21 hectares and is located on the north side of North Shore Boulevard East and immediately east of the Queen Elizabeth Way (QEW). The Site has a frontage of approximately 74.18 metres along North Shore Boulevard East and a site depth of approximately 101.44 metres, which narrows significantly along the west lot line adjacent the QEW on-ramp.

### Purpose and Effect of the Official Plan and Zoning By-law Amendments

The Site is identified as part of the *Downtown Urban Growth Centre* and is designated *Downtown Residential Medium and/or High Density Precinct* in Burlington's Official Plan. The *Downtown Residential Medium and/or High Density Precinct* permits ground or non-ground oriented housing units ranging between 26 and 185 units per hectare, with no prescribed building height. An application for an amendment to the Official Plan has been filed in order to increase the permitted density on the site.

The Site is zoned Downtown Residential – High Density Residential (DRH) Zone in Burlington's Zoning By-law 2020. The DRH zone permits retirement homes and apartments with heights up to 22 metres and densities up to 185 units per hectare. An amendment to the Zoning By-law has been filed to facilitate the development of a seniors living campus, consisting of a 17-storey (64.5m) tower fronting onto North Shore Boulevard East, together with a 12-storey mid-rise element, and stepping down to a 6- and 2-storey low-rise element at the north end of the Site adjacent an existing low-rise neighbourhood. The Applications propose 419 units comprised of 55 memory care units, 155 assisted living units and 209 independent living suites, and a resulting density of 299 units per hectare. A total of 244 parking spaces and 90 bicycle parking spaces are proposed.

