

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement local



ISSUE DATE: November 13, 2020

CASE NO.:

PL200183

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant/Appellant:	Mattamy James Street Limited Partnership
Subject:	Application to amend the Official Plan - Refusal or neglect of City of Burlington to make a decision Downtown Mixed Use Centre - Downtown Medium/High Density Residential Precinct Site Specific (To be determined)
Existing Designation:	
Proposed Designation:	Site Specific (To be determined)
Purpose:	To permit the redevelopment of the subject lands with a seventeen-storey condominium apartment building
Property Address/Description:	2082,2086,2090 James Street
Approval Authority File No.:	505-07/17, 520-16/17
Municipality:	City of Burlington
LPAT Case No.:	PL200183
LPAT File No.:	PL200183
LPAT Case Name:	Mattamy James Street LP 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:	Mattamy James Street Limited Partnership
Subject:	Application to amend Zoning By-law No. 2020 - Refusal or neglect of City of Burlington to make a decision
Existing Zoning:	DRM and DRM-3
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the redevelopment of the subject lands with a seventeen-storey condominium apartment building
Property Address/Description:	2082,2086,2090 James Street
Municipality:	City of Burlington
Municipality File No.:	505-07/17, 520-16/17
LPAT Case No.:	PL200183
LPAT File No.:	PL200184

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject:	Site Plan
Property Address/Description:	2082,2086,2090 James Street
Municipality:	City of Burlington
LPAT Case No.:	PL200183
LPAT File No.:	PL200185

BEFORE:

SUSAN de AVELLAR SCHILLER)	Friday, the 13 th
VICE-CHAIR)	
)	day of November, 2020

THESE MATTERS having come before the Tribunal for a Case Management Conference on September 22, 2020;

AND THE TRIBUNAL having received the requested copy of the Procedural Order, on consent,

THE TRIBUNAL ORDERS that the Procedural Order attached hereto as Schedule 1 is in full force and effect.

"Becky Fong"

BECKY FONG
REGISTRAR

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Schedule 1 PROCEDURAL ORDER

The Tribunal orders that:

1. The Tribunal may vary or add to the directions in this procedural order 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 parties will finalize the Issues List by **Wednesday, October 14, 2020**.
3. The video Hearing will begin on **Monday, April 19, 2021** at 10:00 am..
4. The length of the Hearing will be about **15 (fifteen) days**. The length of the Hearing may be shortened as issues are reordered as settlement is achieved.
5. The Parties and Participants identified at the case management conference are set out in **Attachment 1** (see **Attachment 3** for the meaning of these terms).
6. The Issues are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list after the date set out in para. 2 above unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
7. The order of evidence shall be as set out in **Attachment 4** to this Order. The Tribunal may limit the amount of time allocated for opening statements, direct evidence (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.
8. 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.
9. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/>).

Requirements Before the Hearing

10. 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 on or before **Monday, December 21, 2020**.
11. Expert witnesses in the same field shall have a meeting on or before **Monday, January 19, 2021** and use best efforts 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. This list shall be provided to all of the Parties and filed with the Tribunal on or before **Wednesday, February 3, 2021**.
12. 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 14. 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.
13. 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 14. 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 14.
14. On or before **Friday, March 5, 2021**, the Parties shall provide copies of their expert witness statements to the other Parties.
15. On or before **Friday, March 5, 2021**, 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.
16. Parties may provide to all other Parties a written reply to any written evidence, provided that such reply is circulated to all other Parties on or before **Friday, March 26, 2021**.
17. On or before **Friday, April 9, 2021**, 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.

18. The Parties shall cooperate to prepare a joint document book which shall be shared with the LPAT case co-ordinator, on or before **Wednesday, April 7, 2021**.
19. Any documents which may be used by a Party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other Parties if it is introduced as evidence at the hearing, pursuant to the directions provided by the LPAT case co-ordinator, on or before **Wednesday, April 14, 2021**.
20. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunal's Rules.

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.
21. 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 by **Monday, April 12, 2021** that the written evidence is not part of their record.
22. The Parties shall prepare and file a hearing plan with the Tribunal on or before **Monday, March 29, 2021** 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 in the course of the Hearing.
23. All filings shall be electronic and in hard copy. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or otherwise as the Tribunal may direct. The delivery of documents by email shall be governed by the Tribunal's Rule 7.
24. 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

SUMMARY OF KEY DATES

Date	Hearing Event
Monday, Dec. 21, 2020	Deadline to exchange expert witness list
Monday, Jan. 19, 2021	Meeting of like experts
Wednesday, Feb. 3, 2021	Exchange and file Agreed Statement of Facts
Friday, March 5, 2021	Exchange of expert reports/expert witness statements/written evidence, evidence outlines for witnesses under summons
Friday, March 5, 2021	Exchange of Participant Statements
Friday, March 26, 2021	Exchange of Reply Evidence/Statements
Monday, March 29, 2021	Parties to file Hearing Plan with Tribunal
Wednesday, April 7, 2021	File Joint Document Book
Friday, April 9, 2021	Exchange of Visual Evidence
Wednesday, April 14, 2021	File documents to be used in cross examination
Monday, April 12, 2021	Notification to Tribunal and Parties if witness not to provide oral evidence
Monday, April 19, 2021	Hearing start date

ATTACHMENT 1 – PARTIES AND PARTICIPANTS**Parties****Mattamy James Street Limited Partnership**

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Party Status for OPA and ZBLA - File Nos. PL200183 and PL200184**Regional Municipality of Halton**

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ATTACHMENT 2 – ISSUES LIST

Note 1: *Any Party may call or not call evidence on any issue; however, a Party is obligated to call evidence on any issue raised by that Party.*

City of Burlington Issues List

- 1) Do the proposed amendments and Site Plan have regard for matters of Provincial interest identified in the *Planning Act*, in particular subsections 2 (a), (f), (h), (h.1), (j), (k), (o), (p), (q), and (r)?
- 2) Are the proposed Official Plan Amendment, Zoning By-law Amendment and Site Plan consistent with the Provincial Policy Statement, in particular policies 1.1.1, 1.1.3, 1.3.1, 1.5, 1.6.6, 1.6.6.7, 1.7, 2.1, 2.2, 3.1, and 4.6.?
- 3) Are the proposed Official Plan Amendment, Zoning By-law Amendment and Site Plan in conformity with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019), as amended, in particular policies 1.2.1, 2.2.1, 2.2.2(3), 5.2.5(6), 5.2.5(8)?
- 4) Is an increase beyond 'as of right' zoning permissions and beyond Official Plan designation development standards required for the site in order for the City to achieve its Growth Plan conformity targets?
- 5) Do the proposed Official Plan Amendment, Zoning By-law Amendment and Site Plan conform to policies in the Regional Official Plan with respect to servicing, contamination / remediation, and the Regional Natural Heritage System?
- 6) Are the proposed Official Plan Amendment, Zoning By-law Amendment and Site Plan in conformity with, and maintain the intent of, the policies of the City's Official Plan, in particular:
 - Part I – 3.0(h)
 - Part II – 2.8, 2.10, 2.11, 3.0 (3.2, 3.3, 3.5, 3.6) in relation to the proposed loading area and any redesign necessitated by addressing concerns related to the loading area, 5.0, 6.0 (6.5, 6.6)
 - Part III - 2.2.1, 2.2.2, 2.3, 2.5.1, 2.5.2, 2.6, 5.0 (5.2, 5.4, 5.5, 5.5.3, 5.5.5, 5.5.12, 5.5.14, 5.5.15)
- 7) Does the Proposed Development represent an appropriate level of density and intensification for the subject lands that maintains the intent of the City's Intensification Strategy as implemented through the City's Official Plan?

- 8) What weight, if any, should be given to the Council-endorsed (October 7, 2020) modifications to the adopted Official Plan policies for the City's Downtown?
- 9) What weight, if any, should be given to City Official Plan Amendment #119, including policies 7.2.2 and 7.2.4?
- 10) Does the Proposed Development represent appropriate urban design in addressing matters including height, density, built form, massing, bulk, scale, siting, transitions, building articulation and setbacks having regard for the site and the character of the surrounding lands?
- 11) What weight, if any, should be given to the following design guidelines, including the Tall Building Guidelines (2017), Sustainable Building and Development Guidelines (adopted April 2018, updated April 2019), Downtown Streetscape Guidelines (September 2019), Shadow Study Guidelines and Terms of Reference (June 2020) and the Pedestrian Level Wind Study Guidelines and Terms of Reference (June 2020)? If weight is to be assigned, what are the implications of the application of the Guidelines to the Proposed Development?
- 12) Does the Proposed Development provide for an appropriate transition in built form, height, massing, scale, siting and setbacks that is compatible with the adjacent properties and surrounding area, given the location and context of the subject lands?
- 13) Does the Proposed Development provide for appropriate streetscapes with a pedestrian scale?
- 14) Does the Proposed Development provide sufficient indoor and outdoor amenity area designed and intended for the leisure and recreation of future residents?
- 15) Does the proposed design of the underground parking garage of the Proposed Development allow for appropriate ramp slopes, visibility, width, size and location of parking spaces (including accessible parking), drive aisle widths, structural column spacing, pedestrian crossings / connections?
- 16) Does the Proposed Development provide appropriate driveways and loading spaces for loading vehicles to accommodate truck turning movements and safe ingress/egress between the site and the right-of-way?
- 17) Does the Proposed Development provide sufficient space to allow for all elements of the underground parking structure (i.e. shoring wall, wall piles and caissons, exterior drainage systems, etc.) to be contained within the subject property?
- 18) Would the Proposed Development result in excessive and/or inappropriate shadow or wind impacts on the subject property, adjacent and nearby public realm, nearby parks and open space, or nearby residential properties?
- 19) Does the Proposed Development comply with the Ministry of Environment, Conservation and Park NPC-300 Environmental Noise Guidelines?

- 20) Does the Proposed Development appropriately manage stormwater on the site without resulting in any negative impacts to adjacent properties.?
- 21) Does the design of the Proposed Development provide appropriate landscaping?
- 22) Would the Proposed Development result in any negative impacts to the adjacent Rambo Creek that cannot be mitigated in an acceptable manner, including to but not limited to, upstream and downstream impacts?
- 23) Are the proposed setbacks to the adjacent Rambo creek appropriate?
- 24) Is the proposed channelization and floodplain analysis prepared in support of the Proposed Development appropriate to facilitate the development of the site?
- 25) Does the Proposed Development provide for appropriate grading, drainage and servicing of the site?
- 26) Would the proposed development result in any negative groundwater or hydrogeological impacts in the vicinity of the subject site and have any potential impacts been appropriately and sustainably mitigated?
- 27) Are any alleged negative impacts or conflicts with existing emergency services telecommunications infrastructure relevant to the Proposed Development? If so, would the Proposed Development have a negative impact on or conflict with existing emergency services telecommunication infrastructure? Who, if anyone, has the responsibilities for mitigating any impact? What are the implications, if any, of section 2 paragraphs (f), (h), (n) and (o) of the *Planning Act* and policies 77 (15), 155 and 156 (1) and (4) of the ROP to these issues?
- 28) What are the appropriate conditions of site plan approval?
- 29) Does the Proposed Development represent good land use planning?

Region of Halton Issues List

1. Are the proposed Official Plan Amendment and Zoning By-law Amendment ("the Amendments") consistent with the Provincial Policy Statement (sections 1, 2 & 3) and in conformity with A Place to Grow Plan (section 2, 3, 4 & 5)?
2. Does the proposed development conform to the Regional Official Plan and the Guidelines thereunder? (31 – Healthy Communities; 77 – Urban Area, direction of growth 78; 81 – Intensification, UGCs; 84 – Housing, mix of supply; 87, 88, 89 – Urban Servicing; 115, 116, 117, 118 – RNHS; 139.12 – unmapped features; 147 (17) – Site contamination; and 148, 149 – Solid Waste Management. Applicable Guidelines: Healthy Community Guidelines; Urban Services Guidelines; Potentially Contaminated Sites and Waste Guidelines.

3. Does the Environmental Impact Assessment and other assessments of Rambo Creek submitted in support of the proposed development sufficiently demonstrate conformity with the PPS and the Regional Official Plan, including addressing implementation issues set out in Regional and CA response letters? (dated June 11, 2018, June 13 2019 and February 28, 2020). What weight, if any, should be given to the Guidelines thereunder? If weight is to be assigned, what are the implications of the Guidelines to the subject applications?
4. Has the potential for contamination on the subject lands been adequately assessed and appropriately addressed in accordance with the policies of the Regional Official Plan and the Guidelines thereunder.
5. How should the requirement for a Record of Site Condition (RSC) be secured?
6. Are there measures in place to protect the Rambo Creek and how are those measures to be secured and implemented?
7. What are the appropriate Regional site plan conditions, including the following:
 - a. Is the servicing scheme for the proposed development appropriate, and:
 - i. is there sufficient downstream sewer capacity to service the proposed development?
 - ii. is there sufficient water system capacity to service the proposed development?
 - iii. are there appropriate requirements including permits and fees for new municipal servicing connections.
 - b. Is the design and configuration of the proposed development sufficient to permit Regional waste collection?
 - c. Have appropriate provisions in place for the decommissioning of existing wells on the subject lands?
 - d. Have appropriate provision been made for the elimination of dead-end water mains, looping and secondary connections?
8. Will the Proposed Development interfere with the region emergency service and dispatch communication system? If so, does it raise consistency issues with respect to s. 1.1.1(c) of the PPS?
9. Does the proposed development conform with the City Official Plan community health and safety policies?
10. Are any alleged negative impacts or conflicts with existing emergency services telecommunications infrastructure relevant to the Proposed Development? If so, would the Proposed Development have a negative

impact on or conflict with existing emergency services telecommunication infrastructure? Who, if anyone, has the responsibilities for mitigating any impact? What are the implications, if any, of section 2 paragraphs (f), (h), (n) and (o) of the *Planning Act* and policies 77 (15), 155 and 156 (1) and (4) of the ROP to these issues?

Mattamy James Street Limited Partnership Issues

1. Is this an appropriate site to include ground floor commercial use requirements?
2. Does the Proposed Development meet key objectives of the City's Strategic Plan 2015-2040?
3. Is the current parking standard in the in-force zoning appropriate? Is the parking standard in conformity with Official Plan policies 3.2(j) and (k)?
4. Do the proposed amendments and Site Plan have regard for matters of Provincial interest as outlined in the *Planning Act*, in particular s. 2(f), (h), (j), (p), (q), r) and (s)?
5. Are the proposed Official Plan Amendment and Zoning By-law Amendments and Site Plan consistent with the Provincial Policy Statement, in particular policies 1.1.1, 1.1.2, 1.1.3, 1.4, 1.6.3, 1.6.6.2, 1.7.1 and 1.8.1?
6. Are the proposed Official Plan Amendment and Zoning By-law Amendment and Site Plan in conformity with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019), as amended, in particular policies 1.2.1, 2.1, 2.2.1, 2.2.2, 2.2.3, 2.2.4, 3.2.3, 5.2.4, and 5.2.5, the definitions of *Strategic Growth Areas* and *Urban Growth Centre* and Schedule 4 – Urban Growth Centres?
7. Do the proposed Official Plan Amendment and Zoning By-law Amendment and Site Plan conform to policies in the Regional Official Plan, in particular policies 72-75, 77(2.1) and 78-86?
8. Are the proposed Official Plan Amendment and Zoning By-law Amendment and Site Plan in conformity with, and maintain the intent of, the policies of the City's Official Plan, in particular Part VIII, Definitions, *Compatible*?

ATTACHMENT 3 – TERMS AND INFORMATION

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.

ATTACHMENT 4 – ORDER OF EVIDENCE**Order of Evidence**

1. Mattamy James Street Limited Partnership
2. City of Burlington
3. Regional Municipality of Halton
4. Mattamy James Street Limited Partnership