

Barristers & Solicitors

DocuSigned by:  
*Kelly Yerra*  
C31B459F7028423...

Certified as a true copy

**WeirFoulds**LLP

December 18, 2020

**Denise Baker**  
Partner  
T: 416-947-5090  
dbaker@weirfoulds.com

*via Email and Courier*

**RECEIVED**

File No. 20765.00001

Office of the Regional Clerk  
Regional Municipality of Halton  
1151 Bronte Road  
Oakville, ON L6M 3L1

**DEC 21 2020**

**CLERK'S OFFICE  
REGION OF HALTON**

**RECEIVED BY**

**DEC 21 2020**

**LEGAL SERVICES**

Attn: Graham Milne, Regional Clerk

Dear Mr. Milne:

**RE: Notices of Appeal of City of Burlington New Official Plan  
440 Elizabeth Street Holdings Ltd. and  
2084 Lakeshore (2048) LP and Ltd and related entity 2084 Lakeshore Holdings Ltd.**

---

We are solicitors for 440 Elizabeth Street Holdings Ltd. regarding their properties located at 440 and 446 Elizabeth Street, 439 and 455 John Street, 426 Pearl Street, Burlington, as well as 2084 Lakeshore (2048) LP and Ltd and related entity 2084 Lakeshore Holdings Ltd., the owners of 2083 and 2084 Old Lakeshore, Burlington (collectively, the "**Properties**"). While these entities are related, out of an abundance of caution, we are filing this appeal letter for each of the two separate groups of entities, as a similar policy analysis applies.

The Properties are located within Downtown Burlington and within the Burlington Urban Growth Centre ("**UGC**") and the downtown MTSA.

**Background**

In April 2018, the City of Burlington adopted their new Official Plan which was referred to as "**Grow Bold**" (the "**Grow Bold Plan**"). Following the adoption of the Grow Bold Plan, the Region of Halton made a determination that certain elements of the Grow Bold Plan did not conform to the 2017 Growth Plan. As such, the Region refused to approve the Grow Bold Plan and under the *Planning Act*, the amount of time that the Region had to approve it before an appeal for non-

decision could be filed was suspended. As such the approval of the Grow Bold Plan was effectively put on hold.

While the Grow Bold Plan was on hold, the City reconsidered a number of policies including policies that impact the MTSAs despite the fact that this had not been one of the elements identified by the Region as non-conforming with the Growth Plan.

On November 30, 2020, the Region of Halton issued its Notice of Decision (the “**Decision**”) approving the Grow Bold Plan subject to modifications (the “**Modifications**”). The Modifications are comprised of 1807 new policies, or policy modifications, developed by the staff or consultants of the City of Burlington, staff of the Region of Halton, or by the Mayor and Members of Council for the City of Burlington. Among the many Modifications are brand new policies that have been incorporated from Official Plan Amendment 119, being an amendment to the current in force Official Plan, that are under appeal; policies that were developed in early 2020 through the “Taking a Closer Look at the Downtown” project; as well as Council driven modifications.

### **Reasons for Appeal**

It is our position that a number of the policies that have been incorporated into the Decision are inappropriate and will preclude the development of the Property in accordance with the policies of the Provincial Policy Statement, 2020 (“**PPS**”), the Growth Plan 2019 (the “**Growth Plan**”) and the Region of Halton Official Plan (“**ROP**”). More specifically, this includes:

#### **1. Official Plan Amendment 119**

We are appealing all text and Schedules in the Decision that incorporate the references to the policies approved as part of OPA 119 as they affect the Property which are under appeal before the Tribunal. For your convenience, a copy of the appeal letter for OPA 119 is attached hereto and we rely upon that for the purpose of this appeal as well.

## 2. Urban Growth Centre (UGC)

We are appealing all text and mapping in the Grow Bold Plan, as amended by the Modifications the propose to change the boundary of the UGC. In our opinion, the proposed map change to the boundary of the UGC on Schedules B, B-1, B-2, C, D, D-1, and D-2 has the effect of reducing the overall minimum density of the UGC and is inconsistent with the Provincial Policy Statement (the "PPS") and does not conform with the Growth Plan 2019 (the "Growth Plan") and Halton Region Official Plan ("HROP"). In this regard, policies 2.2.3 iv), 8.1.1 (3), 8.1.1(3.2), and 8.1.2.2 establish a minimum density target of 200 residents and jobs per hectare. Based on our review, the proposed change to the UGC boundary (from the current in-force Burlington Official Plan – Schedule B) would reduce its size by approximately 8 hectares and a minimum of 1,600 residents and jobs.

This change does not conform with policies 52, 72(6), 81.1, 286.1, and Map 1 of the HROP, which establishes the boundaries of the Downtown Burlington UGC and outline that the UGC is to serve as focus areas for investment, accommodate and support major transit infrastructure, serve as high density major employment centres, and accommodate a significant share of population and employment growth.

It is also submitted that this change is inconsistent with the PPS, and specifically policies 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.6, 1.3.1, 1.4.3, 1.6.3, 1.6.7.4, 1.7.1, 1.8.1, since the UGC is well suited for intensification and should be optimized to implement the policies set forth in the PPS, which include intensification, redevelopment, creating a healthy community, promoting densities and land uses that efficiently use land, resources and infrastructure. In our opinion, this change does not conform with policies 1.2.1, 2.1, 2.2.1(2)(c), 2.2.1(4), 2.2.2(1), 2.2.2(3), 3.1, 3.2.3(2), 4.2.10(1), and 5.2.5(6), which seek to optimize the use of land and infrastructure and to encourage growth and intensification in "strategic growth areas", including "urban growth centres".

Moreover, these policies do not conform with the Growth Plan and in particular policies 1.1, 1.2, 1.23, 2.2.1, 2.2.3, 2.2.4, 2.2.6, and 3.1 for all of the same reasons.

### 3. Major Transit Station Areas (MTSA)

We are appealing policies 2.3.1 h), 8.1.1(3), 8.1.2.2, and 8.1.2 which de-emphasize the importance of the Downtown Burlington MTSA. These policies are inconsistent with the PPS and do not conform to the Growth Plan and HROP.

Specifically, these policies do not conform with policies 78 (11), 81(1), 81(3), 81(4) and 81(7), 81(7.2) and 81(8), 172(2), 172(8), 172(9.1), and 172(10) of the HROP which require intensification in MTSA's, to create vibrant and diverse pedestrian-oriented urban environments, to attract a significant portion of population and employment growth to MTSA's, to generally achieve higher densities than surrounding areas, to achieve an increase in residential and employment densities in order to ensure viability of existing an planned transit infrastructure, which requires municipalities to prescribe in Official Plans minimum densities for lands within Intensification Areas (including MTSA's), consider intensification and development of intensification areas (including MTSA's) as the highest priority of urban development within the Region, to ensure development is designed to support public transit, and to promote land use patterns and densities that foster strong live-work relationships that are served by public transit.

It is also our opinion that these policies are inconsistent with the PPS, and specifically policies 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.6, 1.4.3, 1.6.3, 1.6.7.4, 1.7.1, and 1.8.1, since the MTSA is well suited for intensification and should be optimized, which include intensification, redevelopment, creating a healthy community, promoting densities and land uses that efficiently use land, resources and infrastructure. In our opinion, these policies do not conform with policies 1.2.1, 2.1, 2.2.1(2)(c), 2.2.1(4), 2.2.2(1), 2.2.2(3), 3.1, 3.2.3(2), 4.2.10(1), and 5.2.5(6), which seek to optimize the use of land and infrastructure and to encourage growth and intensification in "strategic growth areas", including "major transit station areas".

Moreover, these policies do not conform with the Growth Plan and in particular policies 1.1, 1.2, 1.23, 2.2.1, 2.2.4, 2.2.6, and 3.1 for all of the same reasons.

#### 4. **Built Form & Compatibility**

We are appealing policies 2.3.4 b), 4.3.2 d), 7.3.2 a) i), 7.3.2 a) xiv), 8.3.1(3), 8.1.1(3.1), 8.1.1(3.2), 8.1.1 (3.6.1), 8.1.1(3.10.1), 8.1.1(3.10.2) a), 8.1.1(3.14.1), 8.1.1(3.15), 8.1.1(3.17.1) a), 8.1.1(3.18), 8.1.1(3.18.2), 8.1.1(3.18.5), 8.1.1(3.19.1), 8.1.1(3.19.1), 8.1.1(3.19.3), 8.1.1(3.19.4), and 8.1.1(3.19.6) and schedules A, B, C, D and D-2 are overly prescriptive policies that restrict development on the subject site and creates a policy context that will limit the development potential and optimization of density on the subject site without appropriately addressing compatibility matters.

In our opinion, the *Planning Act* distinguishes between the contents of an Official Plan and a Zoning By-law. In this regard Section 16(1)(a) outlines the contents of an official plan, which is to contain goals, objectives, and policies to manage and direct physical change, among other matters. Whereas Section 34(1) and (3) provides that Zoning By-laws regulate building and structures, including, height, bulk, location, size, floor area, spacing, character and use of buildings, as well as density.

In our opinion these policies do not conform with policies 78 (11), 81(1), 81(3), 81(4) and 81(7), 81(7.2) and 81(8), 172(2), 172(8), 172(9.1), and 172(10) of the HROP, which require intensification in the UGC and MTSAs, to create vibrant and diverse pedestrian-oriented urban environments, to attract a significant portion of population and employment growth to the UGC and MTSAs, to generally achieve higher densities than surrounding areas for UGC and MTSAs, to achieve increased residential and employment densities in order to ensure viability of existing and planned transit infrastructure, requiring municipalities to prescribe in Official Plans minimum (emphasis added) densities for lands within Intensification Areas (including UGC and MTSAs), consider intensification and development of intensification areas (including UGC and MTSAs) as the highest priority

of urban development within the Region, to ensure development is designed to support public transit, and to promote land use patterns and densities that foster strong live-work relationships that are served by public transit.

It is also our opinion that the aforementioned policies are not consistent with the PPS, and, specifically, policies 1.1, 1.1.1, 1.1.3.2, and 1.4.3, since they do not promote efficient development or land use patterns or affordable and market-based range and mix of residential types, employment and other uses to meet long-term needs, land use planning for the Downtown has not been integrated with growth management and transit supportive development and infrastructure, they do not optimize existing transit investment and will not minimize land consumption. Furthermore, these policies will not support densities and a mix of land uses which efficiently use land, infrastructure, and public service facilities, and they will not support densities and a mix of land uses which efficiently use land and infrastructure and public service facilities and that are transit supportive, nor do they help provide for an appropriate range and mix of housing options to meet projected housing needs.

It is also our opinion, that the these policies do not conform with policies 2.2.1(4)c), 2.2.1.2 c)iv), 2.2.2.3 f), 2.2.3.1 d), 5.2.2.1 b), 2.2.3.2, since the proposed policies do not focus growth in areas with existing and planned public service facilities, do not implement the minimum intensification targets appropriately, do not accommodate significant population and employment growth in the UCG and MTSA, they do not allow for the achievement of the minimum (emphasis added) density target of 200 residents and jobs per hectare, do not support development in the UGC and MTSA with a diverse mix of uses and are adversely affecting the achievement of transit supportive densities, and they do not plan for transit-supportive uses on lands adjacent to or near frequent transit.

Moreover, these policies do not conform with the Growth Plan and in particular policies 1.1, 1.2, 1.23, 2.2.1, 2.2.3, 2.2.4, and 2.2.6 for all of the same reasons.

## **5. Area-Specific Plans & Development Application Submission Requirements**

We are appealing policies 3.1.1(2), 5.4.5 c), 6.2.10(2), 6.5.2 i)vi), 8.1.1(3.19.6) b), 8.1.1(3.24), 11.3.1 a) xi), 12.1.1(3) j), 12.1.2(1.2) b) and c)xliiii), 12.1.2(2.2)e), and 12.1.3(4) as these policies add processes and unnecessary requirements that are ambiguous insofar as when and how they are applied, and serve to prolong the development application process, and substantially add to the cost of development, which ultimately impacts affordability.

In our opinion, these policies do not conform with policies 72(5), 72(9), 85(2), 85(3), 86(13.1), and 187 of the RHOP, which: supports sustainable and cost-effective growth, reduce residential land and construction costs and to affect an adequate supply of affordable housing, expedite the development approval processes to reduce the overall cost of housing (emphasis added), seeks to facilitate intensification and facilitate and expedite the development approval process.

Further, these policies are not consistent with Policies 1.1.3.4 and 1.4.3 of the PPS, since they do not facilitate intensification, nor do they establish development standards for residential intensification which minimize the cost of housing and facilitate compact urban form.

Additionally, these policies do not conform with Policy 2.2.6.1b) and 3.1, which states that lower-tier municipalities will identify mechanisms, including the use of land use planning and financial tools, to support housing choice through the achievement of the minimum intensification and density targets, as well as other policies; and, which requires municipalities to undertake an integrated approach to land use planning and to identify the most cost-effective options for sustainably accommodating forecasted growth to support the achievement of complete communities.

In our opinion, these policies frustrate and prolong the development approvals process, which adds to the cost of development and housing and hampers the City's and Region's

ability to facilitate intensification and growth. Moreover, these policies will result in a development approval system that will be increasingly inefficient and unnecessarily costly.

**6. Definitions**

We are appealing the following definitions:

- Neighbourhood Character
- Physical Character
- Scale

It is our submission that the proposed definitions are vague and could be mis-interpreted in a way that may impact the City's ability to achieve its goal of intensification, which would be inconsistent with numerous policies of the PPS and does not conform with numerous policies in the Growth Plan and RHOP, all of which are outlined above.

**Filing Requirements**

For the forgoing reasons, which may be supplemented through the Local Planning Appeal process, including through the provision of issues to be incorporated into a Procedural Order, we are filing this appeal. In satisfaction of the Tribunal's filing requirements, attached please find the following:

1. Two Tribunal appeal forms entitled "Appellant Form (A1)" duly completed and signed;  
and
2. Two firm cheques, each in the amount of \$1,100.00, payable to the Minister of Finance representing the Tribunal's filing fee for the appeals herein.

In the interim, kindly acknowledge the receipt of this letter and advise that the appeal has been forwarded to the Tribunal in accordance with the timing provisions for doing so as set out in the *Planning Act*.



Barristers & Solicitors

Thank you for your attention to this matter. Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours truly,

**WeirFoulds LLP**



Denise Baker

DB/mw

cc client

Encls.

15601759.1

# WeirFoulds<sup>LLP</sup>

Barristers & Solicitors

February 26, 2020

Denise Baker  
Partner  
T: 416-947-5090  
dbaker@weirfoulds.com

*via Email and Courier*

City of Burlington  
City Clerk  
426 Brant Street  
Burlington, ON L7R 3Z6

Attn: Angela Morgan, City Clerk

Dear Ms. Morgan:

**RE: Notice of Appeal of Official Plan Amendment No. 119  
440 and 426 Elizabeth Street, 439 and 455 John Street, 425 Pearl Street**

---

We are solicitors for 440 Elizabeth Street Holdings Ltd. ("440"), regarding their properties located at 440 and 446 Elizabeth Street, 439 and 455 John Street, 426 Pearl Street, (the "Properties").

440 has been involved with respect to the process that resulted in Official Plan Amendment 119 ("OPA 119"). OPA 119 is intended to implement the findings of the study that was prepared as a result of the City passing interim control by-law 10-2019 on March 5, 2019 (the "ICB"). The ICB was passed for a limited area, being the Interim Control by-law Study Area ("ICB Study Area").

440 participated in the ICB process to the extent permitted by the City and once the draft of OPA 119 was released to the public, 440 made an oral delegation through its representative Michael Von Telchman at the statutory public meeting on January 14, 2020.

As most of our concerns were not addressed by the City as between the January 14, 2020 statutory public meeting and the date which OPA 119 was approved, being January 30, 2020, please accept this letter of appeal of OPA 119.

We hereby appeal OPA 119 for the following reasons:

Barristers &amp; Solicitors

- OPA 119 identifies a revised Downtown Urban Growth Centre (the "UGC") boundary. It is unclear how the determination was made as to the limits of the "new" Urban Growth Centre boundary and the rationale for such an amendment. It is our submission that the revised UGC boundary does not conform to the Growth Plan for the Greater Golden Horseshoe and the mapping provided by the Province with respect to the limits of the UGC boundary. As such, we appeal all text and schedules in OPA 119 that identify the Downtown UGC boundary on the basis that section 3(5) of the Planning Act requires conformity with the Provincial Plans, of which the Growth Plan is one.
- OPA 119 adds Section 7.0, which describes the different types of *Major Transit Station Areas* ("MTSA"). OPA 119 also de-emphasizes the importance of the Downtown Burlington MTSA. Notwithstanding the fact that the Downtown MTSA is within the Urban Growth Centre, it appears that the impetus for de-emphasizing the Downtown MTSA is to reduce overall densities within the Downtown, and discourage the UGC as a place for residential and non-residential intensification. It is our position that the policies which seek to de-emphasize the Downtown MTSA are contrary to the Growth Plan, and do not conform with the Region's Official Plan.
- OPA 119 includes policies to guide development applications in advance of the completion of Secondary Plans or major planning studies (undefined). Policies 7.2.1 b) and c) state that to direct an appropriate scale and intensity of transit-supportive development at each MTSA, development should be consistent with Province's Transit Supportive Guidelines and Mobility Hub Guidelines. Based on our review, it appears that the intent of this policy is to de-emphasize the Downtown MTSA which is contrary to the Growth Plan and doesn't represent good planning.
- Policy 7.2.2 j) and k) speak to the requirements to provide new green spaces such as trees and landscape areas, parks and open spaces as part of development applications, to the satisfaction of the City. In our opinion, this policy as drafted, goes beyond what the City is otherwise permitted to require in terms of parkland under the provisions of the Planning Act.
- Policy 7.2.2 o) states that the population and employment growth distributions established in the Regional OP are intended to apply at a city-wide level and cannot be applied on a site-specific basis as a rationale for approving or refusing a development application. The intent

and effect of this policy is to reduce the actual population and employment densities in the Downtown contrary to the 2019 Growth Plan.

- Policy 7.2.2 q) provides development criteria for evaluating development applications within the MTSA Special Planning Area. While we have general concerns with all of the criteria in 7.2.2 q), we have specific concerns with the following:
  - Item iii) which requires that development be consistent with the vision and intent of the MTSA typology established in Section 7.0, which de-emphasizes the Downtown MTSA;
  - Item vi) which requires development to preserve and protect trees. This policy is overreaching and in our opinion is vague and uncertain as it relates to compensation for tree removal prior to the filing of development applications;
  - Item viii) which requires development to facilitate future pedestrian, cycling and/or private street connections as determined by the City across adjacent properties is beyond what the City is permitted to do under the provisions of the Planning Act.
  
- Policy 7.2.4 provides policies for the Downtown MTSA and Policy 7.2.4.2 a) states that the City shall undertake a major planning study to ensure that the Downtown MTSA is planned to implement mixed use transit-supportive development over the long term, while ensuring compatibility with the surrounding area is achieved. It is unclear what a major planning study entails, the timing of such a study, and how that fits with the very recently completed ICB Study process. This area has just been the subject of a year-long study process and this policy contemplates that these lands will be the subject of further study. This is not supportable.

For the forgoing reasons, which may be supplemented through the Local Planning Appeal process, including through the provision of issues to be incorporated into a Procedural Order, we are appealing OPA 119. In satisfaction of the Tribunal's filing requirements, attached please find the following:

1. Tribunal appeal form entitled "Appellant Form (A1)" duly completed and signed; and

# WeirFoulds<sup>LLP</sup>

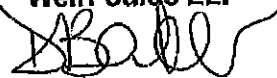
Barristers & Solicitors

2. Our firm cheque, in the amount of \$300.00, payable to the Minister of Finance representing the Tribunal's filing fee for the appeal herein.

In the interim, kindly acknowledge the receipt of this letter and advise that the appeal has been forwarded to the Tribunal in accordance with the provisions of the Planning Act.

Yours truly,

**WeirFoulds LLP**



Denise Baker

DB/mw

cc client

Encls. 2

Barristers & Solicitors

February 26, 2020

Denise Baker  
Partner  
T: 905-829-8600  
dbaker@weirfoulds.com

*via Email and Courier*

File 20765.00001

City of Burlington  
City Clerk  
426 Brant Street  
Burlington, ON L7R 3Z6

Attn: Angela Morgan, City Clerk

Dear Ms. Morgan:

**RE: Notice of Appeal of Official Plan Amendment No. 119  
2083 & 2084 Old Lakeshore, Burlington**

---

We are solicitors for 2084 Lakeshore (2048) LP and Ltd and 2084 Lakeshore Holdings Ltd. (collectively "2084"), the owners of 2083 and 2084 Old Lakeshore, Burlington (the "Properties").

2084 has been involved with respect to the process that resulted in Official Plan Amendment 119 ("OPA 119"). OPA 119 is intended to implement the finding of the study that was prepared as a result of the City passing interim control by-law 10-2019 on March 5, 2019, (the "ICB"). The ICB was passed for a limited area, being the Interim Control by-law Study Area ("ICB Study Area").

2084 participated in the ICB process to the extent permitted by the City and once the draft of OPA 119 was released to the public, 2084 made an oral delegation through its representative Michael Von Teichman at the statutory public meeting on January 14, 2020.

As most of our concerns were not addressed by the City as between the January 14, 2020 statutory public meeting and the date which OPA 119 was approved, being January 30, 2020, please accept this letter of appeal of OPA 119.

We hereby appeal OPA 119 for the following reasons:

- OPA 119 identifies a revised Downtown Urban Growth Centre (the "UGC") boundary. It is unclear how the determination was made as to the limits of the new UGC boundary and the

|   |   |
|---|---|
| <p>Suite 10, 1625 Cornwall Road, Oakville, Ontario, Canada. L6J 0B2</p> | <p>T: 905-829-8600 F: 905-829-2035<br/>www.weirfoulds.com</p> |
|---|---|

rationale for such an amendment. It is our submission that the revised UGC boundary does not conform to the Growth Plan for the Greater Golden Horseshoe and the mapping provided by the Province with respect to the limits of the UGC boundary. As such, we appeal all text and schedules in OPA 119 that identify the Downtown UGC boundary on the basis that section 3(5) of the Planning Act requires conformity with the Provincial Plans, of which the Growth Plan is one.

- The OPA adds Section 7.0, which describes the different types of *Major Transit Station Areas* ("MTSA"). OPA 119 also de-emphasizes the importance of the Downtown Burlington MTSA. Notwithstanding the fact that the Downtown MTSA is within the UGC, it appears that the impetus for de-emphasizing the Downtown MTSA is to reduce overall densities within the Downtown, and discourage the UGC as a place for intensification. It is our position that the policies which seek to de-emphasize the Downtown MTSA are contrary to the Growth Plan, and do not conform with the Region's Official Plan.
- OPA 119 includes policies to guide development applications in advance of the completion of Secondary Plans or major planning studies (undefined). Policies 7.2.1 b) and c) state that to direct an appropriate scale and intensity of transit-supportive development at each MTSA, development should be consistent with Province's Transit Supportive Guidelines and Mobility Hub Guidelines. Based on our review, it appears that the intent of this policy is to de-emphasize the Downtown Bus Depot and reduce the density targets related to it, since the Transit Supportive Guidelines are outdated and do not conform to the Growth Plan, 2019.
- Policy 7.2.2 f) is vague regarding public service facilities and should clearly identify a process that describes a needs analysis for these facilities.
- Policy 7.2.2 j) and k) speak to the requirements to provide new green spaces such as trees and landscape areas, parks and open spaces as part of development applications, to the satisfaction of the City. In our opinion, this policy as drafted, goes beyond what the City is otherwise permitted to require in terms of parkland under the provisions of the Planning Act.
- Policy 7.2.2 o) states that the population and employment growth distributions established in the Regional OP are intended to apply at a city-wide level and cannot be applied on a site-

specific basis as a rationale for approving or refusing a development application. The intent and effect of this policy is to reduce the actual densities in the Downtown contrary to the 2019 Growth Plan.

- Policy 7.2.2 q) provides development criteria for evaluating development applications within the MTSA Special Planning Area (Downtown & Burlington GO MTSA's). While we have general concerns with all of the criteria in 7.2.2 q), we have specific concerns with the following:
  - Item iii) which requires that development be consistent with the vision and intent of the MTSA typology established in Section 7.0, which de-emphasizes the Downtown Bus Depot and applies a lower density target based on an outdated provincial guideline;
  - Item vi) which requires development to preserve and protect trees. This policy is overreaching and in our opinion is vague and uncertain as it relates to compensation for tree removal prior to the filing of development applications;
  - Item viii) which requires development to facilitate future pedestrian, cycling and/or private street connections as determined by the City across adjacent properties and to demonstrate to the satisfaction of the City that appropriate phasing of development where existing retail and service commercial uses are being redeveloped. This policy grants the City additional authority to require connections across private property, which is beyond what the City is permitted to do under the provisions of the Planning Act.
  - Item x) which requires residential developments to demonstrate that public service facilities and other neighbourhood conveniences are located within walking distance or accessible by transit. This policy creates a potential issue for areas within the downtown that do not have existing public service facilities.
- Policy 7.2.2 r) exceeds the authority of the municipality to require. As well, the language is unclear and it is impossible to determine how the three sub-criteria can be achieved on every site within the MTSA Special Planning Area, for which residential uses is proposed.
- Policy 7.2.4 provides policies for the Downtown MTSA and Policy 7.2.4.2 a) states that the City shall undertake a major planning study to ensure that the Downtown MTSA is planned



Barristers & Solicitors

**WeirFoulds** LLP

to implement mixed use transit-supportive development over the long term, while ensuring compatibility with the surrounding area is achieved. It is unclear what a major planning study entails, the timing of such a study, and how that fits with the very recently completed ICB Study process. This area has just been the subject of a year-long study process and this policy contemplates that these lands will be the subject of further study. This is not supportable.

For the forgoing reasons, which may be supplemented through the Local Planning Appeal process, including through the provision of issues to be incorporated into a Procedural Order, we are appealing OPA 119. In satisfaction of the Tribunal's filing requirements, attached please find the following:

1. Tribunal appeal form entitled "Appellant Form (A1)" duly completed and signed; and
2. Our firm cheque, in the amount of \$300.00, payable to the Minister of Finance representing the Tribunal's filing fee for the appeal herein.

In the Interim, kindly acknowledge the receipt of this letter and advise that the appeal has been forwarded to the Tribunal in accordance with the provisions of the Planning Act.

Thank you for your attention to this matter. Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours truly,

**WeirFoulds LLP**



Denise Baker

DB/mw

cc client

Encls. 2



**Ontario Land Tribunals**  
 Local Planning Appeal Tribunal  
 655 Bay Street, Suite 1500  
 Toronto ON M5G 1E5  
 Telephone: 416-212-6349  
 Toll Free: 1-866-448-2248  
 Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca)

## Appellant Form (A1)

Receipt Number (LPAT Office Use Only)

Date Stamp Appeal Received by Municipality/Approval Authority

### To file an appeal, select one or more below

- Appeal of *Planning Act* matters for Official Plans and amendments, Zoning By-Laws and amendments and Plans of Subdivision, Interim Control By-laws, Site Plans, Minor Variances, Consents and Severances, proceed to Section 1A
- Second appeal of a *Planning Act* matter for Official Plans and amendments, Zoning By-Laws and amendments, proceed to Section 1B. NOTE: Bill 139, *Building Better Communities and Conserving Watersheds Act, 2017*, allows appeals to the Tribunal of some *Planning Act* matters previously determined by LPAT.
- Appeals of other matters, including Development Charges, *Education Act*, *Aggregate Resources Act*, *Municipal Act* and Ontario Heritage, proceed to Section 1C

### 1 A. Appeal Type (Please check all applicable boxes)

| Subject of Appeal                               | Type of Appeal   | Reference (Section) |
|---|--|---------------------|
| <b>Planning Act Matters</b>                     |  |                     |
| <b>Official Plan or Official Plan Amendment</b> | <input type="checkbox"/> Appeal a decision by local council that adopted an OP or OPA (exempt from approval by Minister or Approval Authority)   | 17(24)              |
|   | <input checked="" type="checkbox"/> Appeal a decision of an Approval Authority that approved or did not approve all or part of a plan or amendment   | 17(36)              |
|   | <input type="checkbox"/> Approval Authority failed to make a decision on the plan within 120 days  | 17(40)              |
|   | <input type="checkbox"/> Council failed to adopt the requested amendment within 120 days   | 22(7)               |
|   | <input type="checkbox"/> Council refuses to adopt the requested amendment  |                     |
| <b>Zoning By-law or Zoning By-law Amendment</b> | <input type="checkbox"/> Appeal the passing of a Zoning By-law   | 34(19)              |
|   | <input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 90 days   | 34(11)              |
|   | <input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision within 120 days where the application is associated with an Official Plan Amendment |                     |
|   | <input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality   |                     |
| <b>Interim Control Zoning By-law</b>            | <input type="checkbox"/> Appeal the passing of an Interim Control By-law within 60 days (Minister only)  | 38(4)               |
|   | <input type="checkbox"/> Appeal the passing of an extension of an Interim Control By-law within 60 days  | 38(4.1)             |
| <b>Site Plan</b>                                | <input type="checkbox"/> Application for a site plan – council failed to make a decision within 30 days  | 41(12)              |

| Subject of Appeal          | Type of Appeal   | Reference (Section) |
|----------------------------|--|---------------------|
|                            | <input type="checkbox"/> Appeal requirements imposed by the municipality or upper tier municipality  | 41(12.01)           |
| <b>Minor Variance</b>      | <input type="checkbox"/> Appeal a decision of the Committee of Adjustment that approved or refused the application                                     | 45(12)              |
| <b>Consent/Severance</b>   | <input type="checkbox"/> Appeal a decision that approved or refused the application  | 53(19)              |
|                            | <input type="checkbox"/> Appeal conditions imposed   |                     |
|                            | <input type="checkbox"/> Appeal changed conditions   | 53(27)              |
|                            | <input type="checkbox"/> Application for consent – Approval Authority failed to make a decision on the application within 90 days                      | 53(14)              |
| <b>Plan of Subdivision</b> | <input type="checkbox"/> Application for a plan of subdivision – Approval Authority failed to make a decision on the plan within 120 days              | 51(34)              |
|                            | <input type="checkbox"/> Appeal a decision of an Approval Authority that approved a plan of subdivision  |                     |
|                            | <input type="checkbox"/> Appeal a decision of an Approval Authority that did not approve a plan of subdivision   |                     |
|                            | <input type="checkbox"/> Appeal a lapsing provision imposed by an Approval Authority   | 51(39)              |
|                            | <input type="checkbox"/> Appeal conditions imposed by an Approval Authority  |                     |
|                            | <input type="checkbox"/> Appeal conditions - after expiry of 20 day appeal period but before final approval (only applicant or public body may appeal) | 51(43)              |
|                            | <input type="checkbox"/> Appeal changed conditions   | 51(48)              |

**1 B. Appeal Type (Please check all applicable boxes) Only for appeal(s) of a new decision or non-decision by municipality or Approval Authority following a previous LPAT Decision (i.e., second appeal).**

**For matters subject to Bill 139 and the associated transition regulation (the second appeal).**

| Subject of Appeal   | Type of Appeal  | Reference (Section)   |
|---|---|-----------------------|
| <b>Planning Act Matters</b>   |   |                       |
| <b>Official Plan or Official Plan Amendment</b><br>Official Plan or Official Plan Amendment | <input type="checkbox"/> Appeal of a <b>decision</b> by Approval Authority on an OP or OPA (exempt from approval by Minister or Approval Authority) following a LPAT decision | 17(24) and 17(49.6)   |
|   | <input type="checkbox"/> Appeal of a <b>decision</b> by Council or Approval Authority on an OP or OPA following a LPAT decision   | 17(36) and 17(49.6)   |
|   | <input type="checkbox"/> Appeal of a <b>refusal</b> within 90 days by Council following a LPAT decision   | 22(7) and 22(11.0.12) |
|   | <input type="checkbox"/> Appeal of a <b>non-decision</b> within 90 days by Council following a LPAT decision  |                       |
| <b>Zoning By-law or Zoning By-law Amendment</b>   | <input type="checkbox"/> Appeal of a <b>refusal</b> within 90 days by Council following a LPAT decision   | 34(11) and 34(26.5)   |
|   | <input type="checkbox"/> Appeal of a <b>non-decision</b> within 90 days by Council following a LPAT decision  |                       |
|   | <input type="checkbox"/> Appeal of a <b>decision</b> by Council following a LPAT decision   | 34(19) and 34(26.5)   |

**1 C. Other Appeal Types (Please check all applicable boxes)**

| <b>Subject of Appeal</b>                       | <b>Type of Appeal</b>  | <b>Reference (Section)</b> |
|--|--|----------------------------|
| <b><i>Development Charges Act Matters</i></b>  |  |                            |
| <b>Development Charge By-law</b>               | <input type="checkbox"/> Appeal a Development Charge By-law  | 14                         |
|  | <input type="checkbox"/> Appeal an amendment to a Development Charge By-law  | 19(1)                      |
| <b>Development Charge Complaint</b>            | <input type="checkbox"/> Appeal municipality's decision regarding a complaint  | 22(1)                      |
|  | <input type="checkbox"/> Failed to make a decision on the complaint within 60 days   | 22(2)                      |
| <b>Front-ending Agreement</b>                  | <input type="checkbox"/> Objection to a front-ending agreement   | 47                         |
|  | <input type="checkbox"/> Objection to an amendment to a front-ending agreement   | 50                         |
| <b><i>Education Act Matters</i></b>            |  |                            |
| <b>Education Development Charge By-law</b>     | <input type="checkbox"/> Appeal an Education Development Charge By-law   | 257.65                     |
|  | <input type="checkbox"/> Appeal an amendment to an Education Development Charge By-law   | 257.74(1)                  |
| <b>Education Development Charge Complaint</b>  | <input type="checkbox"/> Appeal approval authority's decision regarding a complaint  | 257.87(1)                  |
|  | <input type="checkbox"/> Failed to make a decision on the complaint within 60 days   | 257.87(2)                  |
| <b><i>Aggregate Resources Act Matters</i></b>  |  |                            |
| <b>Aggregate Removal Licence</b>               | <input type="checkbox"/> One or more objections against an application for a 'Class A' aggregate removal licence                       | 11(5)                      |
|  | <input type="checkbox"/> One or more objections against an application for a 'Class B' aggregate removal licence                       |                            |
|  | <input type="checkbox"/> Application for a 'Class A' licence – refused by Minister   | 11(11)                     |
|  | <input type="checkbox"/> Application for a 'Class B' licence – refused by Minister   |                            |
|  | <input type="checkbox"/> Changes to conditions to a licence  | 13(6)                      |
|  | <input type="checkbox"/> Amendment of site plans   | 16(8)                      |
|  | <input type="checkbox"/> Minister proposes to transfer the licence – applicant does not have licensee's consent                        | 18(5)                      |
|  | <input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant is licensee or has licensee's consent to transfer |                            |
|  | <input type="checkbox"/> Minister proposes to refuse transfer of licence – applicant does not have licensee's consent to transfer      |                            |
| <input type="checkbox"/> Revocation of licence | 20(4)  |                            |
| <b><i>Municipal Act Matters</i></b>            |  |                            |
| <b>Ward Boundary By-law</b>                    | <input type="checkbox"/> Appeal the passing of a by-law to divide the municipality into wards  | 222(4)                     |
|  | <input type="checkbox"/> Appeal the passing of a by-law to redivide the municipality into wards  |                            |
|  | <input type="checkbox"/> Appeal the passing of a by-law to dissolve the existing wards   |                            |
| <b><i>Ontario Heritage Act Matters</i></b>     |  |                            |

| Subject of Appeal              | Type of Appeal  | Reference (Section) |
|--------------------------------|---|---------------------|
| Designation of Property        | <input type="checkbox"/> Appeal a Notice of intention to designate property   | 29(11)              |
|                                | <input type="checkbox"/> Appeal of an amendment to a by-law designating property  | 30.1(10)            |
|                                | <input type="checkbox"/> Appeal a Notice of Intention to repeal a designating by-law or part of a designating by-law                            | 31(9)               |
|                                | <input type="checkbox"/> Appeal a council's decision to approve or refuse the repealing of a designating by-law or part of a designating by-law | 32(7)/32(8)         |
|                                | <input type="checkbox"/> Appeal council's decision to alter a heritage designated property  | 33(9)               |
| Heritage Conservation District | <input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation study area  | 40.1(4)             |
|                                | <input type="checkbox"/> Appeal the passing of a by-law designating a heritage conservation district  | 41(4)               |

#### Other Act Matters

| Subject of Appeal | Act/Legislation Name | Section Number |
|-------------------|----------------------|----------------|
|                   |                      |                |

## 2. Location Information

Address and/or Legal Description of property subject to the appeal  
440 and 446 Elizabeth Street, 439 and 455 John Street, and 426 Pearl Street, Burlington

Municipality  
Regional Municipality of Halton

Upper Tier (Example: county, district, region)

## 3. Appellant/Objector Information

**Note:** You must notify the LPAT of any change of address or telephone number in writing. Please quote your LPAT Case/File Number(s) after they have been assigned.

Last Name

First Name

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)  
440 Elizabeth Street Holdings Ltd.

Email Address  
Michael@montik.ca

Daytime Telephone Number  
416-968-7070

ext.201

Alternate Telephone Number

### Mailing Address

| Unit Number | Street Number | Street Name       | PO Box      |
|-------------|---------------|-------------------|-------------|
|             | 178           | St. George Street |             |
| City/Town   | Province      | Country           | Postal Code |
| Toronto     | ON            | Canada            | M5R 2M7     |

## 4. Representative Information

I hereby authorize the named company and/or individual(s) to represent me

|   |                       |  |                        |
|---|-----------------------|--|------------------------|
| Last Name<br>Baker                            |                       | First Name<br>Denise                       |                        |
| Company Name<br>WeirFoulds LLP                |                       |  |                        |
| Professional Title<br>Barrister and Solicitor |                       |  |                        |
| Email Address<br>dbaker@weirfoulds.com        |                       |  |                        |
| Daytime Telephone Number<br>416-947-5090      |                       | Alternate Telephone Number<br>905-829-8600 |                        |
| Mailing Address                               |                       |  |                        |
| Unit Number<br>10                             | Street Number<br>1525 | Street Name<br>Cornwall Road               | PO Box                 |
| City/Town<br>Oakville                         | Province<br>ON        | Country<br>Canada                          | Postal Code<br>L6J 0B2 |

**Note:** If you are representing the appellant and are not licensed under the *Law Society Act*, please confirm that you have written authorization, as required by the LPAT's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

- I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

## 5. Appeal Reasons

Municipal Reference Number(s)  
City of Burlington New Official Plan

For all appeal types, please outline the nature of the appeal and the reasons for your appeal.

see attached correspondence

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

A: A decision of a Council or Approval Authority is:

- Inconsistent with the Provincial Policy Statement, issued under subsection 3(1) of the *Planning Act*
- Fails to conform with or conflicts with a provincial plan
- Fails to conform with an applicable Official Plan

And

B: For a non-decision or decision to refuse by council:

- Consistency with the provincial policy statement, issued under subsection 3(1) of the *Planning Act*
- Conformity with a provincial plan
- Conformity with the upper-tier municipality's Official Plan or an applicable Official Plan

If you intend on arguing on one or more of the above throughout a proceeding, please explain:

**Oral/written submissions to council**

If applicable, did you make your opinions regarding this matter known to council?

- Oral submissions at a public meeting of council
- Written submissions to council

**6. Related Matters**

Are there other appeals not yet filed with the Municipality?

- Yes
- No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

- Yes
- No ▼

If yes, please provide LPAT Case Number(s) and/or Municipal File Number(s)  
PL200150 OPA 119

**7. Mediation**

Mediation is a confidential process in which the parties to an appeal talk about their differences and, with the facilitative assistance of an impartial individual, a mediator, negotiate a consensual resolution of the appeal. Unless the Tribunal determines that there is a good reason for not addressing the appeal with mediation, all parties shall presume that their differences will first be addressed through a mediation directed by the Tribunal. As such, parties shall act and prepare accordingly, meaning good faith negotiation and collaboration are a priority and are expected by the Tribunal.

- I have read and understand the above statement.

**8. Witness Information**

Detail the nature and/or expertise of witnesses you will have available.  
Land Use Planner, Urban Design, Transportation, Land Economist

**For all other appeal types :**

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.).

**9. Required Fee**

Total Fee Submitted \$ 1,100

- Payment Method ▶  Certified cheque     Money Order     Lawyer's general or trust account cheque

## 10. Declaration

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

| Name of Appellant/Representative | Signature of Appellant/Representative  | Date (yyyy/mm/dd) |
|----------------------------------|--|-------------------|
| Denise Baker                     |  | 2020/12/18        |

Personal information or documentation requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990 c. P. 13 and the *Local Planning Appeal Tribunal Act*. After an appeal is filed, all information relating to this appeal may become available to the public.