

Barristers & Solicitors

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*Kelly Yerna*  
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certified as a true copy.

**WeirFoulds**LLP

December 21, 2020

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

*via Email and Courier*

File 18721.00002

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

**RECEIVED**  
DEC 21 2020  
CLERK'S OFFICE  
REGION OF HALTON

Attn: Graham Milne, Regional Clerk

Dear Mr. Milne:

**RE: Notice of Appeal of City of Burlington New Official Plan  
Branthaven Development Corp.**

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We are counsel for S & G Consulting Inc., 735 Oval Inc., and Branthaven Development Corp. (collectively, "**Branthaven**"), with respect to their related interests in 720, 735, and 740 Oval Court; 5135 Fairview Holdings Inc., with respect to its property located at 5135 Fairview Street; and 1602211 Ontario Limited, with respect to its property 5155 Fairview Street, in the City of Burlington, (collectively the "**Properties**"). While we are filing three separate appeals for the three entities, all of the Properties are contiguous and are governed by the same planning policies and therefore are the captured in this same appeal letter.

**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 the policies that it had adopted for 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 affect the MTSAs; policies that have been incorporated from Official Plan Amendment 119, being an amendment to the current in force Official Plan, that is 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.

It is our position that many of the newly crafted policy directives are not consistent with Provincial Policy Statement (2020) (the “**PPS**”) and do not conform with the Growth Plan (2019), (the “**Growth Plan**”) and fail to conform to the Region of Halton Official Plan (2018). Accordingly, we submit this Notice of Appeal of the Decision.

### **Reasons for Appeal**

In the Decision, the Properties are designated as:

- Urban Area - Schedule A – City System
- Mixed Use Nodes and Intensification Corridors, within a MTSA Special Planning Area and also within 500 metres of Major Transit Station Area – Schedule B – Urban Structure
- Primary Growth Area – Schedule B-1 – Growth Framework
- Urban Corridor - Employment – Schedule C – Land Use – Urban Area

- Within the MTSA Special Planning Area – Schedule H – Appleby Go MTSA Special Planning Area

We are appealing the following policies on a policy wide basis: section 2.3.1, 2.3.2, section 5 and section 8.2 in their entirety to the extent that it applies to the Urban Corridor- Employment designation; section 7 in its entirety, section 8.1.2 in its entirety, section 8.1.3, 8.1.3 (2) in its entirety, section 8.1.3(7) in its entirety, section 8.1.3(8) in its entirety, section 11.2.1, section 12.1, section 12.1.1, section 12.1.2, section 12.1.3 and schedules A1, B, B-1, and C, on the basis that they are overly prescriptive policies that restrict development of the Properties within their intended provincial policy context and will limit the development potential and optimization of density of the Properties.

### **1. OPA 119**

In addition to the foregoing, we are appealing all of the policies from OPA 119 that were incorporated into the Grow Bold Plan. In doing so we rely upon the letter that we filed in appealing OPA 119, which is attached here for the Tribunal's convenience.

### **2. Major Transit Station Area Policies**

The policies that apply to Major Transit Station Areas are not consistent and do not conform with Provincial and Regional policy and generally lack clarity as to how they are intended to be implemented. It is unclear based on the proposed modifications to the MTSA's, what policies are applicable to the properties within the GO MTSA lands which are to be further studied through the future Area Specific Plans.

It is not clear how long redevelopment in these areas will be deferred or how development applications will be considered in the interim and prior to the Region's MCR, work which will set out growth to 2051 and the City's Area Specific Plan work which will be under the Grow Bold Plan which only applies to 2031.

It would appear that a further amendment to these areas will be required under a 2031 planning horizon, to achieve Provincial and Regional objectives that require growth to be accommodated to 2051. This appears contrary to the direction to advance intensification in the MTSA to accommodate growth needs in accordance with the Growth Plan. This is especially problematic given the restrictions placed on the Appleby Go MTSA Special Planning Area, which does not permit residential development on a majority of the lands designated as Urban Corridor – Employment, and also with respect to the policies that currently limit heights to 6 storeys and floor area ratios of 2.0:1.

The Major Transit Station Area policies together with the underlying land use designations within the GO MTSA Special Planning Area are not consistent with the Provincial Policy Statement (2020) for the following reasons:

- They will not allow for the MTSA Special Planning Area to accommodate an appropriate affordable and market-based range and mix of residential types, employment (including industrial and commercial), and other uses to meet long-term needs (Policy 1.1.1); and
- They will not provide for an appropriate range and mix of housing options and densities to meet projected requirements of current and future residents of the regional market area and will not allow for the ability to accommodate residential growth for a minimum of 15 years through residential intensification and redevelopment (Policy 1.4.1).

The Major Transit Station Area policies together with the underlying land use designations within the MTSA Special Planning Area policies do not conform with the Growth Plan for the following reasons:

- They don't allow for forecasted growth to the horizon of the Growth to be focused in strategic growth areas and locations with existing transit (Policy 2.2.1.c);
- They don't provide for an urban form that will optimize infrastructure, particularly along transit and transportation corridors, to support the achievement of complete communities through a more compact built form (Policy 2.2.1.3.c);
- They do not support the achievement of complete communities that:

- feature a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and public service facilities;
- provide for a more compact built form and a vibrant public realm, including public open spaces (Policy 2.2.1.4 a and e).
- They do not support the achievement of complete communities by:
  - planning to accommodate forecasted growth to the horizon of this Plan;
  - planning to achieve the minimum intensification and density targets in this Plan;
  - considering the range and mix of housing options and densities of the existing housing stock; and
  - planning to diversify their overall housing stock across the municipality (Policy 2.2.6.2 a) b) c) d).
- They do not support development within major transit station with a diverse mix of uses, including additional residential units and affordable housing, to support existing transit (Policy 2.2.4.9.a).

The Major Transit Station Area policies together with the underlying land use designations within the GO MTSA Special Planning Area policies do not conform with the Regional Official Plan for the following reasons:

- They do not support the Regional objectives for Intensification Areas, to provide a diverse and compatible mix of land uses, including residential and employment uses, to support neighbourhoods (Policy 78);
- They do not support the Regional objectives for Intensification Areas, to cumulatively attract a significant portion of population and employment growth (Policy 78); and
- They do not support the Regional objectives for Intensification Areas, specifically for Major Transit Station Areas and Intensification Corridors, to achieve increased residential and employment densities in order to ensure the viability of existing and planned transit infrastructure and service and to achieve a mix of residential, office, institutional and commercial development, where appropriate (Policy 78).

### 3. Urban Corridor Policies

While it is our position that the Properties should be designated Urban Corridor, there are policies that apply to Urban Corridor lands (Policy 8.1.3(7)) that are not consistent and do not conform with Provincial and Regional policy.

The Urban Corridor policies allow for a maximum floor area ratio of 2.0:1 which can be exceeded through a Zoning By-law Amendment provided the objectives of the designation are maintained, however, the maximum building height policy does not have the same language. Flexibility should also be given to allow the maximum building height to be exceeded subject to the objectives of the designation being maintained, especially given that these lands are within a MTSA Special Planning Area and many site-specific development applications will be proceeding the Area Specific Plans for these areas.

The current Urban Corridor uses as applied in the MTSA actually conflict with other policies in the Grow Bold Plan, approved subject to Modifications. The policies in Section 2.3.1 state that Mixed Use Nodes and Intensification Corridors will provide for transit supportive densities in compact form. The policies for the MTSA in Section 2.3.1 (h) provide that the MTSA will provide a wide variety of land uses and building types and transit supportive densities and yet the heights and densities are constrained to low-rise, low density forms through the Urban Corridor policies. The MTSA's are to be the focal point for higher levels of intensification according to the Plan and yet the implementing policies constrain that ability. Much of the reliance to achieve the Provincial objectives for the MTSA comes through references to the Region finalizing the boundaries and setting minimum intensification targets, which we know will be for growth to 2051.

The Grow Bold Plan also states that the City will require further study of Area Specific Plans and further amendments to the Plan to incorporate these decisions by the Region. The interim approach to these areas should still be to implement the level of intensification and development with appropriate and well-informed policies to meet Provincial requirements and not to artificially constrain them through the requirement for further amendments.

The Urban Corridor policies are not consistent with the Provincial Policy Statement for the following reasons:

- They do not promote efficient development and land use patterns (Policy 1.1.1 a);
- They will not allow for the MTSA Special Planning Area to accommodate an appropriate affordable and market-based range and mix of residential types, employment (including industrial and commercial), and other uses to meet long-term needs (Policy 1.1.1 b);
- They do not promote the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs (Policy 1.1.1 e);
- They will not provide for an appropriate range and mix of housing options and densities to meet projected requirements of current and future residents of the regional market area, and will not allow for the ability to accommodate residential growth for a minimum of 15 years through residential intensification and redevelopment (Policy 1.4.1); and
- They will not provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents through promoting densities for new housing which efficiently use land and will not establish development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form (Policy 1.4.3 d) and f).

The Urban Corridor policies do not conform with the Growth Plan for the following reasons:

- They do not support the achievement of complete communities that:
  - feature a diverse mix of land uses, including residential and employment uses and convenient access to local stores, services, and public service facilities;
  - provide for a more compact built form and a vibrant public realm, including public open spaces (Policy 2.2.1.4 a and e).
- They do not support the achievement of complete communities by:
  - planning to accommodate forecasted growth to the horizon of this Plan;
  - planning to achieve the minimum intensification and density targets in this Plan;

- considering the range and mix of housing options and densities of the existing housing stock; and
- planning to diversify their overall housing stock across the municipality (Policy 2.2.6.2 a) b) c) d).

The Urban Corridor policies do not conform with the Regional Official Plan for the following reasons:

- They do not support the Regional objectives to accommodate a significant share of population and employment growth (Policy 7.3, 81 and 81.1); and
- They do not support the Regional objectives for housing, to explore and implement new approaches to reduce residential land and construction costs and to encourage the Local Municipalities and the building and development industry to develop innovation housing designs that stress flexibility in use, cost-efficiency and affordability (Policy 85(2) and (8)).

#### **4. Employment policies and Urban Corridor - Employment Policies**

The policies that apply to Employment uses and lands and the Urban Corridor –Employment are not consistent and do not conform with Provincial and Regional policy.

By way of background, as part of the process of the adoption of the new Official Plan by the City of Burlington, a submission was made with respect to the Properties, a copy of which is attached for your convenience and relied upon as part of this appeal letter. In response to that submission, a resolution was passed by the City of Burlington Council directing staff to amend the designation on the Properties to the Urban Corridor designation on Schedule C.

Staff in response to that direction from Council removed the overlay adding the lands to the Region's Employment Area but maintained the existing land use designation (Urban Corridor-Employment) as it was intended to address the final land use designation for these lands as part of the Appleby Mobility Hub Area Specific Plan process. Staff assured Branthaven at that time that there was a policy framework within the adopted Official Plan which would allow the future consideration of a range of mixed uses on the Properties including residential uses through the



future site-specific plan process. On that basis, Branthaven has held numerous meetings with City staff to discuss the development scenario for these lands and has moved to the technical pre-consultation stage and anticipate filing a development application in the near future.

The Region of Halton through the proposed modifications to the City of Burlington Official Plan has fundamentally changed the context of the applicability of the employment policies through their modifications which will now impact how employment conversions are treated, thereby impacting possibility of achieving residential uses on these lands. This is in part due to the inconsistency of the multiple references as to the terms “employment uses”, “employment lands” “lands designated for employment uses”, “Employment Areas” “Employment suffix”, and the varying policy contexts which apply to each of these terms.

There is substantial confusion raised through these modifications regarding the applicability of these policies and the restrictions regarding conversion of the lands, through a future area specific study as it appears that it now can only occur through a comprehensive review. Whereas it was our understanding that the intent of the Burlington Official Plan when adopted was to provide flexibility for the City to amend designations in the future for those lands outside of the Region of Halton Employment Area Overlay, through the modifications, the employment restrictions now apply to all employment lands and specifically all land uses with the Employment suffix on Schedule C.

The Urban Corridor – Employment designation which does not permit residential uses and again conflicts with other policies in the Grow Bold Plan is inappropriate for this Mixed Use Node and Intensification Corridor given that it is also a Primary Growth Area and a MTSA Special Planning Area. Not permitting residential land uses on a substantial amount of the lands within this MTSA Special Planning Area does not support a diverse mix of uses, including residential, to support existing transit investment.

Further, the policy that states that the addition of non-employment uses to these lands through a site-specific Official Plan Amendment shall only be permitted on lands that sustain a similar number of jobs currently located on the site, or 50 jobs per net hectare, is highly prescriptive and

severely limits the opportunity for appropriate intensification within this area. The Urban Corridor – Employment policies also allow for a maximum floor area ratio of 2.0:1 to be exceeded through a Zoning By-law Amendment provided the objectives of the designation are maintained, however, the maximum building height policy does not have the same language. Flexibility should also be given to allow the maximum building height to be exceeded subject to the objectives of the designation being maintained, especially given that these lands are within a MTSA Special Planning Area and many site-specific development applications will be proceeding the Area Specific Plans for these areas.

The Urban Corridor - Employment policies are not consistent with the Provincial Policy Statement (2020) for the following reasons:

- They do not promote efficient development and land use patterns (Policy 1.1.1 a);
- They will not allow for the MTSA Special Planning Area to accommodate an appropriate affordable and market-based range and mix of residential types, employment (including industrial and commercial), and other uses to meet long-term needs (Policy 1.1.1 b);
- They do not promote the integration of land use planning, growth management, transit-supportive development, intensification and infrastructure planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs (Policy 1.1.1 e);
- They will not provide for an appropriate range and mix of housing options and densities to meet projected requirements of current and future residents of the regional market area, and will not allow for the ability to accommodate residential growth for a minimum of 15 years through residential intensification and redevelopment (Policy 1.4.1); and
- They will not provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents through promoting densities for new housing which efficiently use land and will not establish development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form (Policy 1.4.3 d) and f).

The Urban Corridor - Employment policies do not conform with the Growth Plan for the following reasons:

- They do not support the achievement of complete communities that:
  - feature a diverse mix of land uses, including residential and employment uses, and convenient access to local stores, services, and public service facilities;
  - provide for a more compact built form and a vibrant public realm, including public open spaces (Policy 2.2.1.4 a and e).
- They do not support the achievement of complete communities by:
  - planning to accommodate forecasted growth to the horizon of this Plan;
  - planning to achieve the minimum intensification and density targets in this Plan;
  - considering the range and mix of housing options and densities of the existing housing stock; and
  - planning to diversify their overall housing stock across the municipality (Policy 2.2.6.2 a) b) c) d).
- They do not support development within Major Transit Station Areas with a diverse mix of uses, including additional residential units and affordable housing, to support existing transit (Policy 2.2.4.9.a)).

The Urban Corridor - Employment policies do not conform with the Regional Official Plan for the following reasons:

- They do not support the Regional objectives for Urban Growth Centres to accommodate a significant share of population and employment growth (Policy 81.1(4));
- They do not support the Regional objectives for housing, to explore and implement new approaches to reduce residential land and construction costs and to encourage the Local Municipalities and the building and development industry to develop innovation housing designs that stress flexibility in use, cost-efficiency and affordability (Policy 85(2) and (8));
- They do not support the Regional objectives for Intensification Areas, to provide an urban form that is complementary to existing developed areas, uses space more economically, promotes live-work relationships, fosters social interaction, enhances public safety and

security, reduces travel by private automobile, promotes active transportation, and is environmentally more sustainable (Policy 78(1));

- They do not support the Regional objectives for Intensification Areas, to provide a diverse and compatible mix of land uses, including residential and employment uses, to support neighbourhoods (Policy 78(4));
- They do not support the Regional objectives for Intensification Areas, to cumulatively attract a significant portion of population and employment growth (Policy 78(6)); and
- They do not support the Regional objectives for Intensification Areas, specifically for Major Transit Station Areas and Intensification Corridors, to achieve increased residential and employment densities in order to ensure the viability of existing and planned transit infrastructure and service and to achieve a mix of residential, office, institutional and commercial development, where appropriate (Policy 78(11) a and b).

## **5. Implementation**

The appealed implementation policies will result in a development approval system which will be inefficient and unnecessarily costly for all development applications within the City of Burlington. The requirements proposed in the Plan for Official Plan Amendments will restrict the ability for applicants to achieve 'complete applications' and for the City to determine the completeness of an application within 30 days in receipt of application fees. On top of this, requiring that an Official Plan Amendment request is consistent with the City's Strategic Plan is not in conformity with the Growth Plan which intends development to be based on long term planning. A City's Strategic Plan is either the 4-year vision of elected officials, or the performance and operational measures for the corporation. Neither properly informs land use planning.

Further, substantial restrictions apply to development proponents. Prior to a submission, a proponent is required to consult with the public and compile the results prior to the City accepting the proponent's application. This will lead to the City being able to arbitrarily decide to not accept an application, as is currently happening within the City. In addition, the policies in Section 11 contribute to the arbitrary and discretionary nature of the public process.

As stated in PPS 2020, Part IV: Vision for Ontario's Land Use Planning System: Strong communities, a clean and healthy environment and a strong economy are inextricably linked. Long-term prosperity, human and environmental health and social well-being should take precedence over short-term considerations. The City's proposed implementation policies serve to make the land use planning process unnecessarily cumbersome and expensive, which is inconsistent with the policies of the PPS.

### **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 appealing City of Burlington New Official Plan. In satisfaction of the Tribunal's filing requirements, attached please find the following:

1. Three Tribunal appeal forms entitled "Appellant Form (A1)" duly completed and signed; and
2. Three firm cheques, each in the amount of \$1,100.00, 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 timing provisions for doing so as set out in the *Planning Act*.

Barristers & Solicitors

**WeirFoulds**<sup>LLP</sup>

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**

A handwritten signature in black ink, appearing to read 'Denise Baker', with a large, sweeping flourish at the end.

Denise Baker

DB/mw

Encls.

15569718.1

Barristers & Solicitors

**WeirFoulds** LLP

February 26, 2020

*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  
Branthaven Development Corp.**

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

File 18721.00002

We are counsel for S & G Consulting Inc., Branthaven 735 Oval Inc., and Branthaven Development Corp. (collectively, "Branthaven"), with respect to their interests in 720, 735, and 740 Oval Court, in the City of Burlington ("Subject Site").

Official Plan Amendment 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"). It is of note that the ICB was passed for a limited area, being the Interim Control By-law Study Area ("ICB Study Area") and under the ICB, only lands within the ICB Study Area were studied. The Subject Site is not within the ICB Study Area, and, therefore, Branthaven has not been involved in the ICB process.

Despite OPA 119 having as its purpose the implementing of the findings of the Interim Control By-law Land Use Study, there are policies contained within OPA 119 that apply city-wide. This is identified and confirmed by the City in Part A of OPA 119 itself. This is very concerning because all communication with respect to the ICB clearly identified which lands were subject to the ICB. In fact the City's own dedicated ICB website contains a map that clearly identifies the lands that are subject to the ICB and ICB Study Area.

As such, the fact that there are now policies in OPA 119 that affect lands beyond the boundaries of the ICB Study Area, calls into question the legal legitimacy of OPA 119 and the notices that were provided as required by the Planning Act to all land owners outside the ICB Study Area

limits. It is our position that having policies in OPA 119 that affect lands outside the ICB Study Area is entirely inappropriate and an abuse of the ICB authority under the Planning Act. As such, it is our position that any policy that applies to lands outside the ICB Study Area should be struck or otherwise modified so as to not apply to lands outside the ICB Study Area.

Specifically, it is our position that the policies in section 7.1 which require the preparation of Secondary Plans or other major planning studies (undefined) for the Major Transit Station Areas ("MTSA") be deleted from OPA 119, save for the two MTSA's within the ICB Study Area.

Specifically, it is our position that the policies in section 7.1 which require the preparation of Secondary Plans or other major planning studies (undefined) for the Appleby GO MTSA be removed from OPA 119 on the basis that the policy structure flowing from the requirement to be subject to the policies in 7.1 is entirely prejudicial to those who have landholdings within the Appleby MTSA. Specifically, the City has approved section 7.2, which sets out policies for development applications that will be permitted to proceed in advance of the completion of the Secondary Plans. However, these policies would only apply to the two MTSA's within the ICB Study Area. This results in a policy absurdity whereby development applications can be considered for those lands which were the subject of study through the ICB, in advance of any Secondary Plan being prepared. However, for those lands within a MTSA, but located outside the ICB Study area, applications will not be considered in advance of the completion of a Secondary Plan or other major planning study. To make matters worse, there is no timeframe for the completion of the Secondary Plan by the City, effectively resulting in the freezing of lands that were not even to be considered as part of the ICB process.

Brant Haven was made aware of the fact that OPA 119 was proposed to impact lands outside of the ICB Study Area immediately in advance of the statutory public meeting with respect to OPA 119 and brought this matter to the attention of Council, including the provision of alternative language to ensure that the policies flowing from the ICB would only apply to the lands that were the subject of the ICB. However, Council did not make any modifications to the relevant policies in OPA 119 and, as such, we are required to file this appeal of OPA 119.

For the foregoing 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:



Baristers & Solicitors

**WeirFoulds** LLP

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 timing provisions for doing so as set out in 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

Encls 2

cc client

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Barristers & Solicitors

**WeirFoulds**<sup>LLP</sup>

**VIA E-MAIL**

February 26, 2018

City of Burlington  
426 Brant Street  
PO Box 5013  
Burlington, Ontario  
L7R 3Z6

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

File 16121.00001

Dear Mr. Mayor and Members of Council

**RE: City of Burlington Proposed New Official Plan**

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We are solicitors for Branthaven Development Corp. owners the property municipally known as at 720 Oval Court, Burlington. Under the February 2018 proposed Official Plan, 720 Oval Court is located in a Primary Growth Area, and is part of the Mixed Use Node and Intensification Corridor, but is proposed to be designated Urban Corridor- Employment Lands, permitting only employment uses.

In addition to 720 Oval Court, the properties at 735 and 740 Oval Court and 5155 Fairview Street, 5135 Fairview Street (collectively with 720 Oval Court, the "Properties"), are all similarly designated under the proposed Official Plan and therefore the comments in this letter should likewise apply to those properties for consistency.

The Properties have frontage onto both Oval Court and Fairview Street and abut commercial/industrial uses to the north and east, a vehicle parking lot and small creek to the west, and residential land uses to the south on the opposite side of Fairview Street. The Properties are within the designated Appleby GO Mobility Hub as they are located immediately adjacent to the Appleby Go Station.

**Policy Consideration**

The Properties are within the Primary Growth Area within the City's proposed Official Plan, where the Primary Growth Area:

- (ii) shall be recognized as a distinct area within the City's Urban Area accommodating the majority of the city's forecasted growth over the planning horizon of this Plan and beyond, and consequently will experience the greatest degree of change;

(iii) shall be regarded as the most appropriate and predominant location for new tall buildings subject to the underlying land use designations, or the land use policies of an area-specific plan;

(iv) shall be identified as priority locations for City-initiated area-specific planning and for investments in transit as well as other types of infrastructure and public service facilities, including parks to support population and employment growth; and

(v) shall support the frequent transit corridors and accommodate development that is compact, mixed use, and pedestrian-oriented in nature.

Under section 2.3.1 of the proposed Official Plan, Mobility Hubs are identified as Mixed Use Intensification Areas. Specifically policy 2.3.1(i) states in part that:

...The high level of existing or planned transit service within these areas provides an environment within which significant residential and employment growth can be supported. To further support the transit oriented nature of these areas, growth shall occur in the form of compact, mixed-use and pedestrian-friendly areas with residential and employment intensities greater than which exist in the surrounding areas. These are emerging areas in the Urban Structure that represent opportunities to intensify and develop complete communities.

It is also of note that the proposed Official Plan identifies the Appleby GO Mobility Hub as a Major Transit Station Area. Under the in force Region of Halton Official Plan (ROP), the lands are also designated as Major Transit Station Area and within the policies of the ROP, the purpose of a Major Transit Station Area is to achieve, among other things: Residential and employment densities to ensure the viability of existing and planned transit infrastructure and service; and to provide for a mix of residential, office, institutional, and commercial uses.

We also note in the proposed Official Plan policy 5.4.7 (b) which states:

b) Mobility Hubs are currently being considered through an area-specific planning process that will consider the importance of accommodating employment over the long term in areas targeted for intensification.

Additionally proposed policy 8.1.2 states:

"Upon the completion of an area-specific plan, all new objectives, policies and land use designations pertaining to individual mobility hubs will be found in this section..."

Notwithstanding all of the aforementioned policies, it remains unclear why the Properties and the Go Station parking lot remain the only lands south of the rail line within the Appleby Mobility

Hub that are designated solely for employment uses. Such a designation is, in our submission, inconsistent with the Provincial Policy Statement, contrary to the Growth Plan, contrary to the policies within the ROP and contrary to the proposed policies in the City's proposed Official Plan. It is our submission that the Properties should be designated in such a way that maximizes their residential and non-residential potential to satisfy the aforementioned policies

Further, given that the policies in the proposed Official Plan clearly contemplate further significant study for Mobility Hubs to ensure that the policies and land use designations are correct, it is wholly premature to designate the Properties only for employment uses at this time.

Finally, it is of note that the current employment function of the Properties would not be compromised as any residential use on the Properties would be required to be part of a mixed use development, thereby maintaining the employment function that currently exists on the Properties.

#### Conversion Criteria

Additionally, we note that the change in designation of the Properties meets the assessment criteria established by Council as follows:

Proposal must pass the following 7 criteria to be a candidate for conversion:

<b>Council-Approved Employment Land Conversion Policy</b>	<b>Assessment as it relates to Oval Court lands</b>
Proposal shall only be considered as part of MCR.	Being considered as part of MCR.
There is a demonstrated need for the conversion.	As the City is undertaking to convert lands, there is a demonstrated need.
The proposal shall not detrimentally affect the short and long term employment land needs of the City.	City identified demand of 149 net hectares for employment land from 2011 to 2031. Employment land supply (after re-designations proposed in Dillon's report) is 308.1 net hectares. Combined area of Oval Court Land is approx. 4.9 hectares.
The proposal will not adversely affect the achievement of the intensification/density targets.	Re-designating subject lands to high density mixed use employment/residential/commercial will help meet intensification targets.
The intensity and characteristics of the proposed non-employment uses shall not adversely impact the overall viability of the employment area, desirability, or the proper servicing of existing and future surrounding land uses.	The proposal would retain employment function and introduce mixed uses that would be complimentary to the employment uses (i.e. ground floor commercial uses) and for the residential uses (providing commercial uses for the residents, as well as a buffer from the industrial uses to the north).

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	Servicing studies will be conducted to ensure non-adverse impacts to municipal/regional infrastructure.
There is existing or planned infrastructure to accommodate the proposed conversion.	The subject lands are within the built boundary of the ROP
Cross-jurisdictional issues have been considered.	The subject site is not within the Regional employment lands overlay.  The subject site does not border any other municipality.

Further, at least 2 of the following 5 criteria must be met:

<b>Council-Approved Employment Land Conversion Policy</b>	<b>Assessment as it relates to Oval Court Lands</b>
Amount of land affected is minor in area based on the projected land requirements within the planning horizon of the plan.	The projected total demand is 149 ha (2011 to 2031). Total supply is 308.1 ha  The subject site is 4.9 ha in size (1.6 % of total supply)
The development of the site is not feasible for employment uses within the planning horizon of the Plan	The proposal for mixed use employment/residential/commercial is compatible with existing and planned future uses, as commercial uses will be complimentary to the employment and residential uses and the mixed use aspect will provide a buffer for the sensitive residential uses to the south.  The site's current use is employment, however it is under-utilized and can be put to greater use – a "Transit-supportive" use.
There are no alternative sites, designated and approved for the proposed use elsewhere in the City	As the site is located directly adjacent to Appleby GO Station and Sherwood Forest Park, there is no other site which is designated for such an advantageous use of existing amenities and infrastructure.
The proposal will have a beneficial impact on the surrounding uses and the broader community.	Complimentary commercial uses will have a positive impact on the employment and residential areas.  A high density employment/residential/commercial mixed use area adjacent to the GO station will allow maximum utilization of existing parks and transit, which will reduce the stress on the remainder of the community's infrastructure.
The development of the lands for non-employment uses will meet a public need identified by City Council Resolution.	Staff Report PB-30-16 states "The Official Plan will include policies that identify that a future area specific plan will be required to support the planning of this future GO Station. The policy will recognize the opportunity for

	<p>the creation of an employment intensification node within the existing employment lands north of the rail. <u>The policy will also highlight the role of the mixed use corridor along Fairview Street as a means to support the employment area to the north of the rail with amenities and a wide range of uses and transit oriented development to support the station.</u></p>
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### Resident Input

We reached out to 99 of the most affect homes located at 5090 and 5110 Fairview Street. Of those 99, 39 responded. Of those 39, 21 provided signed a petition indicating that they were in support of a motion to re-designate the Oval Court Lands from employment to permit a mix of uses in the area, rather than only allowing employment uses. 6 indicated that they opposed such a motion. In addition to the 21 who signed the petition, 3 others indicated that they were supportive, but didn't want to sign. 9 others indicated that they were indifferent or that it wasn't a good time to learn more about the uses on the Properties.

### Requested Motion

Given the foregoing, we are requesting that Council reconsider its decision with respect the designation of these lands. We are requesting that the following motion for reconsideration be put forward to Council at the earliest opportunity:

“Direct the Director of Planning to amend the proposed Official Plan to designate the lands municipally known as 720, 735 and 740 Oval Court and 5135 and 5155 Fairview Street as Urban Corridor on Schedule C of the City of Burlington Official Plan and to direct that the Appleby GO Mobility Hub Area Specific Plan consider and develop appropriate policies for these lands to allow the employment function to be retained, in conjunction with other uses.”

### Summary

The City is undertaking a Municipal Comprehensive Review at this time and therefore it is appropriate to ensure that the designation of the Properties is appropriate for the long term. It is submitted that the most appropriate designation for the Properties is Mixed Use which will support and enhance the role of the Mobility Hub.

In our submission, the Properties are among the best in the City to be designated for a full range and mix of uses. Currently the Properties are underutilized in achieving population and employment targets under provincial policy. It has to be recognized that the future of Burlington employment will be clean employment uses (ie. office uses) which are compatible with

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residential uses in the surrounding neighborhood and any the dwellings that would be constructed on the Properties.

Further, this area is rich with parkland and adjacent residential uses which are not compatible with heavy industry. Further, the Properties abut the GO station which would allow workers and residents to flow into and out of the area, morning and evening. The proximity to the GO is but one transportation consideration, given that many key bus routes also converge at the GO station which would allow proposed residents to travel via Burlington Transit throughout the City.

The redesignation of the Properties will in no way impact the employment land needs of the City as the existing employment function will proposed to be maintained. The redesignation will instead assist the municipality in achieving density and intensification targets in the Mobility Hubs, an area which has been identified as the Primary Growth Area.

Please do not hesitate to contact the undersigned if you have any questions.

Yours truly,

**WeirFoulds LLP**



Denise Baker

DB/mw

Encls.

cc Client



**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>		
Official Plan or Official Plan Amendment Official Plan or Official Plan Amendment	<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	
Zoning By-law or Zoning By-law Amendment	<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	
Interim Control Zoning By-law	<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)
Site Plan	<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	51(39)
	<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	
	<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> 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  
5135 Fairview 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)  
5135 Fairview Holdings Inc.

Email Address

acotton@breakwaterinvestments.ca

Daytime Telephone Number

289-219-4691

ext.

Alternate Telephone Number

### Mailing Address

Unit Number

Street Number

5135

Street Name

Fairview Street

PO Box

City/Town

Burlington

Province

ON

Country

Canada

Postal Code

L7L 4W8

## 4. Representative Information

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

Last Name

Baker

First Name

Denise

Company Name

WeirFoulds LLP

Professional Title

Barrister and Solicitor

Email Address

dbaker@weirfoulds.com

Daytime Telephone Number

416-947-5090

ext.

Alternate Telephone Number

905-829-8600

Mailing Address

Unit Number

10

Street Number

1525

Street Name

Cornwall Road

PO Box

City/Town

Oakville

Province

ON

Country

Canada

Postal Code

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)

**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.