

DEVINE PARK LLP

PLANNING AND DEVELOPMENT LAWYERS

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F005-02

February 26, 2020

DELIVERED VIA EMAIL (cityclerks@burlington.ca) **& COURIER**

The City Clerk
The Corporation of the City of Burlington
426 Brant Street, PO Box 5013
Burlington, ON L7R 3Z6

ATTENTION: Angela Morgan, City Clerk

Dear Ms. Morgan:

**RE: - Notice of Appeal to Local Planning Appeal Tribunal respecting
Official Plan Amendment No. 119**

- City of Burlington Interim Control By-law Land Use Study (PL-01-20)

**- Appeal filed on behalf of Northgate Properties Inc. (c/o Fengate
Asset Management) re: 850 Legion Road**

We are the solicitors for Northgate Properties Inc. (c/o Fengate Asset Management), the owner of the lands municipally known as 850 Legion Road in the City of Burlington (the "**Property**"). The Property is located within the area subject to Interim Control By-law No. 10-2019 (the "**ICBL**"), and is also currently under consideration for redevelopment by our client. As such, our client has an interest in the matters set out below.

On January 13, 2020, we provided written submissions to the Community Planning, Regulation and Mobility Committee respecting the ICBL Land Use Study (PL-01-20). We have now received the Notice of Decision respecting the adoption of Amendment No. 119 to the Official Plan of the City of Burlington ("**OPA 119**"), dated February 6, 2020. For the reasons set out below, we remain concerned respecting the contents of OPA 119.

Please accept this letter and the enclosed materials as our Notice of Appeal of OPA 119 to the Local Planning Appeal Tribunal, pursuant to subsection 17(36) of the *Planning Act*.

GROUNDINGS FOR APPEAL

The appeal relates to OPA 419 in its entirety, as it pertains to the Property. Of particular concern are the policies in Section 7.2, including the additional development criteria in Policy 7.2.2(r), which set out a number of mandatory requirements for developments in MTSA Special Planning Areas which involve an Official Plan Amendment proposing residential uses. As further detailed in our objection letter, our concerns with these requirements include the following:

- Our concerns arise, in part, due to the lack of public consultation undertaken during the ICBL land use study. Without a clear dialogue between the municipality and private sector partners, and absent clear guidance on the requirements in Policy 7.2.2(r) will be assessed and applied (for example, in relation to size or scale of redevelopment), it is unclear whether these policies can be achieved in the manner put forward.
- Moreover, whether due to lack of consultation or otherwise, there is a lack of clear justification for these requirements in the resulting ICBL Land Use Study reports. While staff noted that the objectives behind this policy align with strategic initiatives supported and justified by the City in past work, there has been no clear rationale put forward for whether or how these specific requirements in MTSA Special Planning Areas may help to achieve such strategic initiatives, or for whether or how such requirements may in fact undermine efforts for redevelopment by increasing the complexity, feasibility, or costs of such development. While the mandatory requirements in Policy 7.2.2(r) may in fact address pressing and important public objectives, the lack of serious consideration of both the means and planning merits of achieving these objectives in this manner may in fact threaten to undermine the municipality's objectives, by reducing incentives for residential development in the area. These objectives could be achieved through alternate means which encourage opportunities for additional housing supply in locations which warrant tall buildings and greater densities, rather than through prescriptive policies of this nature. Given such alternatives, it is clear that these prescriptive policies (and the lack of clear guidance on the implementation) do not serve to meet the broader housing objectives in Section 1.4 of the Provincial Policy Statement, Section 2.2.6 of the Growth Plan 2019, and the policies of the Regional Official Plan (for example, sections 84, 85 and 86).
- More broadly, we remain concerned that the policies in Section 7.2, while interim in application (pending designation of Major Transit Station Areas by the Region of Halton), impose onerous requirements and constrain development, particularly where study terms of reference or Council-adopted urban design guidelines already exist to address these matters. For this reason, Section 7.2 conflicts with provincial and regional directions respecting the optimization of land and its uses. When applied on a site-specific basis, these constraints on development are inconsistent with Policies 1.1.1 (a) and (e), 1.1.3.2(a), 1.1.3.2(b), and 1.1.3.4 of the Provincial Policy Statement; do not conform with Policies 1.2.1 and 2.1.3 of the Growth Plan 2019; and do not conform with Regional Official Plan Policies 72(2) and 85(4).

ENCLOSURES

In support of this Notice of Appeal, please find enclosed the following:

1. A completed Local Planning Appeal Tribunal Appeal Form A1; and
2. A solicitor's cheque in the amount of \$300, payable to the "Minister of Finance", which represents the Tribunal's prescribed appeal fee in this matter.

Should you require further information or have any questions/concerns about the above, please do not hesitate to contact the undersigned.

Yours very truly,

Devine Park LLP



Adrian Frank

AGF/JME

cc: Samantha Romlewski, Community Planning, City of Burlington
Northgate Properties Inc. (c/o Fengate Asset Management)
Dana Anderson, MHBC
Kelly Martel, MHBC



Environment and Land Tribunals Ontario
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.elto.gov.on.ca

Appellant Form (A1)

Instructions for preparing and submitting the Appellant Form (A1)

For help navigating the LPAT appeals process, practices and procedures, please see information on the LPAT website <http://elto.gov.on.ca/tribunals/lpat/lpat-process/>

- **Important: Do not send your appeal directly to the Local Planning Appeal Tribunal (LPAT).** Submit your completed appeal form(s) and filing fee(s) by the filing deadline to either the Municipality or the Approval Authority/School Board, as applicable. The notice of decision provided by the Municipality/Approval Authority/School Board will tell you where to send the form and appeal fee.
- The Municipality/Approval Authority/School Board will forward your appeal(s) and fee(s) to the LPAT.
- We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible at:
Toll free: 1-866-448-2248; or
TTY: 1-800-855-1155 via Bell relay
- E-mail is the primary form of communication used by the LPAT. Providing an e-mail address ensures prompt delivery/receipt of documents and information. Please ensure to include your e-mail address in the space provided on the appeal form.
- A filing fee is required for each type of appeal you are filing. Please see the Tribunal's Fee Schedule to calculate the correct amount due.
- To view the Fee Schedule, visit the LPAT's website [<http://elto.gov.on.ca/lpat/fee-chart/>].
- The filing fee **must** be paid by certified cheque or money order, in Canadian funds, payable to the **Minister of Finance**. Do not send cash.
- If you are represented by a lawyer the filing fee may be paid by a solicitor's general or trust account cheque.
- Professional representation is not required but please advise the LPAT if you retain a representative after the submission of this form.
- Should you need more room to provide a further explanation to any sections throughout this form, please attach a separate letter to the back of the form.
- Provide both an electronic copy (.pdf) and paper copy of all document submissions. The electronic submissions are to be provided by USB key.
- The *Planning Act, Development Charges Act, Education Act, Local Planning Appeal Tribunal Act*, and others, are available on the LPAT website [<http://elto.gov.on.ca/lpat/legislation-and-rules/>].



Environment and Land Tribunals Ontario
Local Planning Appeal Tribunal

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 Toronto ON M5G 1E5
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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)
Planning Act Matters		
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)
Minor Variance	<input type="checkbox"/> Appeal a decision of the Committee of Adjustment that approved or refused the application	45(12)
Consent/Severance	<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)
Plan of Subdivision	<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)
Planning Act Matters		
Official Plan or Official Plan Amendment Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal of a decision 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 decision 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 refusal within 90 days by Council following a LPAT decision	22(7) and 22(11.0.12)
	<input type="checkbox"/> Appeal of a non-decision within 90 days by Council following a LPAT decision	
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal of a refusal within 90 days by Council following a LPAT decision	34(11) and 34(26.5)
	<input type="checkbox"/> Appeal of a non-decision within 90 days by Council following a LPAT decision	
	<input type="checkbox"/> Appeal of a decision by Council following a LPAT decision	34(19) and 34(26.5)

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

Subject of Appeal	Type of Appeal	Reference (Section)
Development Charges Act Matters		
Development Charge By-law	<input type="checkbox"/> Appeal a Development Charge By-law	14
	<input type="checkbox"/> Appeal an amendment to a Development Charge By-law	19(1)
Development Charge Complaint	<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)
Front-ending Agreement	<input type="checkbox"/> Objection to a front-ending agreement	47
	<input type="checkbox"/> Objection to an amendment to a front-ending agreement	50
Education Act Matters		
Education Development Charge By-law	<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)
Education Development Charge Complaint	<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)
Aggregate Resources Act Matters		
Aggregate Removal Licence	<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)	
Municipal Act Matters		
Ward Boundary By-law	<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	
Ontario Heritage Act Matters		

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
850 Legion Road

Municipality
City of Burlington

Upper Tier (Example: county, district, region)
Region of Halton

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)
Northgate Properties Inc. (c/o Fengate Asset Management)

Email Address
andrew.konev@fengate.com

Daytime Telephone Number
905-491-6596

ext.

Alternate Telephone Number

Mailing Address

Unit Number
700

Street Number
2275

Street Name
Upper Middle Rd. E.

PO Box

City/Town
Oakville

Province
Ontario

Country
Canada

Postal Code
L6H 0C3

4. Representative Information

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

Last Name Frank	First Name Adrian
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Company Name Devine Park LLP

Professional Title

Email Address adrian.frank@devinepark.com
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Daytime Telephone Number 416-645-4582	ext.	Alternate Telephone Number 416-645-4573
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Mailing Address			
Unit Number 2302	Street Number 250	Street Name Yonge Street	PO Box

City/Town Toronto	Province Ontario	Country Canada	Postal Code M5B 2L7
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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)
PL-01-20

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

Please see enclosed cover letter for nature of and reasons for appeal.

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:
Please see enclosed cover letter for further explanation.

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

For all other appeal types :

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

Land Use Planner


9. Required Fee

Total Fee Submitted \$ 300

- 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)
Adrian Frank		2020/02/26

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.

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TORONTO-DOMINION CENTRE BRANCH
55 KING ST. W. & BAY ST.
TORONTO, ONTARIO M5K 1A2

002437

2437

Feb 26, 2020

\$300.00



*** Three Hundred *****

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PAY
TO THE
ORDER OF

Minister of Finance

DEVINE PARK LLP

PER _____

PER _____

F005-02 Appeal Fee - OPA 119 re 850 Legion Rd, Burlington

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SECURITY FEATURES INCLUDE: SEE REVERSE
CONTIENIR DES CARACTÉRISTIQUES DE SÉCURITÉ VOTRE LE VERSO

S1073