Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: March 05, 2024 **CASE NO(S).:** OLT-21-001738

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

Applicant and Appellant:	Emshih Developments Inc.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	To permit a large scale, neighbourhood commercial development
Property Address:	700 & 800 Burloak Drive
Municipality/UT:	Burlington/Halton
Municipality File No.:	505-06/04
OLT Case No.:	OLT-21-001738
OLT Lead Case No.:	OLT-21-001738
OLT Case Name:	Emshih Developments Inc. v. Burlington (City)

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

Applicant and Appellant:	Emshih Developments Inc.
Subject:	Application to amend Zoning By-law - Refusal or neglect to make a decision
Description:	To permit a large scale, neighbourhood commercial development
Property Address:	700 & 800 Burloak Drive
Municipality/UT:	Burlington/Halton
Municipality File No.:	520-11/04
OLT Case No.:	OLT-21-001739
OLT Lead Case No.:	OLT-21-001738

Heard: February 29, 2024, in writing

APPEARANCES:

Parties	**Counsel**
Emshih Developments Inc. ("Applicant")	Anna Toumanians
City of Burlington ("City")	Blake Hurley
Regional Municipality of Halton ("Region")	Kelly Yerxa

DECISION DELIVERED BY JEAN-PIERRE BLAIS AND ORDER OF THE TRIBUNAL

DECISION

[1] These Appeals were commenced under sections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended ("Act"), due to a non-decision by the City with respect to the Applicant's applications for Official Plan Amendment and Zoning By-law Amendment. The Applicant seeks to develop commercially the lands municipally known as 800 Burloak Drive in the City.

[2] Disposition of the matter has come before the Tribunal in writing as a settlement motion agreed to by all the Parties. The Tribunal confirms that it has received, reviewed, and considered the following materials:

a. the uncontested opinion evidence of Dana Anderson, a professional land use planner and Registered Professional Planner with the Ontario Professional Planners Institute, contained in her comprehensive affidavit sworn on February 22, 2024 and marked as **Exhibit 1**; and,

b. Minutes of City Council dated January 16, 2024 and marked as **Exhibit 2**.

[3] The Tribunal understands that the affidavit evidence of Ms. Anderson reflects

revisions to the applications that were reached through the cooperative efforts of the Parties.

[4] The Tribunal accepts the opinion evidence of Ms. Anderson as presented in her affidavit and similarly finds that the subject applications, as revised, have regard to those applicable matters of provincial interest found in section 2 of the Act, are consistent with the Provincial Policy Statement (2020), conform to the Growth Plan for the Greater Golden Horseshoe (2020), conform to Region's Official Plan, conform to the City's Official Plan which is currently in force, and otherwise reflect principles of good land use planning and are in the public interest.

[5] The Tribunal notes that the City adopted a new Official Plan in October 2020, which was approved by the Region, with modifications, on November 30, 2020. The new Official Plan remains under appeal before the Tribunal. Any required implementation of this settlement will be undertaken through that appeal.

ORDER

[6] **THE TRIBUNAL ORDERS THAT :**

a. the Appeals are allowed in part;

b. the Official Plan for the City of Burlington is amended as set out in **Attachment 1** to this Order;

c. By-Law No. 2020 of the City of Burlington is amended as set out in **Attachment 2** to this Order. The Tribunal authorizes the Municipal Clerk of the City of Burlington to assign a number to this by-law for record-keeping purposes.

"Jean-Pierre Blais"

JEAN-PIERRE BLAIS
MEMBER

ATTACHMENT 1

OFFICIAL PLAN AMENDMENT

AMENDMENT NO. 145 TO THE OFFICIAL PLAN

OF THE BURLINGTON PLANNING AREA

CONSTITUTIONAL STATEMENT

The details of the Amendment, as contained in Part B of this text, constitute Amendment No.145 to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of this Amendment is to redesignate the lands at 800 Burloak Drive currently designated as “General Employment” to “Neighbourhood Commercial” and to add a site-specific policy to permit a mixed-use building with a maximum height of 4 storeys.

2. SITE AND LOCATION

The subject lands are municipally known as 800 Burloak Drive and are located on the south side of Burloak Drive. The lands are rectangular in shape, have a total net lot area of 2.03 ha and a frontage of approximately 118 m.

3. BASIS FOR THE AMENDMENT

a) The application proposes land uses that have regard for the Provincial Policy Statement (PPS, 1997) and are consistent with the Provincial Policy Statement (PPS, 2020).

b) The PPS promotes protecting the long-term health and safety of the population and the financial and economic well-being of Province and municipalities by avoiding development and land use patterns which may cause environmental or public health and safety concerns.

c) Intensification of land within built-up, serviced areas of the City makes more efficient use of existing developed lands and provides employment opportunities which meets the intent of the Growth Plan and the Region of Halton Official Plan.

d) The proposed development supports the City's objective to broaden the range of housing forms and supply to meet City needs in a manner that is compatible with surrounding properties and uses.

e) The proposed development is located on lands with adequate infrastructure and in close proximity to transit routes, commercial uses and community amenities so satisfies Official Plan policies to provide housing opportunities in locations that can reduce travel times and decrease dependence on the car.

f) The applicant submitted technical studies that provide adequate and appropriate information to support the development.

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Map Change:

Schedule A – Settlement Pattern, of the Official Plan (1997, as amended), is modified by re-designating the lands identified as “A” on Schedule “A” attached hereto from “Employment Lands” to “Residential Areas”.

Schedule B – Comprehensive Land Use Plan – Urban Planning Area, of the Official Plan (1997, as amended), is modified by re-designating the lands designated as “A” on Schedule “B” attached hereto from “General Employment” to “Neighbourhood Commercial” with a site-specific policy.

Text Change:

The text of the 1997 Official Plan for the Burlington Urban Planning Area, as amended, is hereby amended as follows:

By adding the following site-specific policy l) at the end of Part III, Land Use Policies – Urban Planning Area, Section 4.6 Neighbourhood Commercial, Subsection 4.6.2 Policies:

800 Burloak Drive	l) Notwithstanding the policies of Part III, Section 4.6, Subsections 4.6.2 a), b) and c) of this Plan, the subject lands *shall* be subject to the following: a) Retail and *service commercial* uses *shall* be permitted with a limited amount of *service commercial* uses at grade, *dwelling units shall* be permitted above the first storey of the building. b) a maximum building height of 4 storeys c) be in accordance with a Class 4 Area as defined by the Ontario Ministry of the Environment Environmental Noise Guideline Publication NPC-300.

2. INTERPRETATION

This Official Plan Amendment shall be interpreted in accordance with the "Interpretation" policies of Part VI, Implementation, Section 3.0, Interpretation, of the Official Plan of the Burlington Planning Area.

3. IMPLEMENTATION

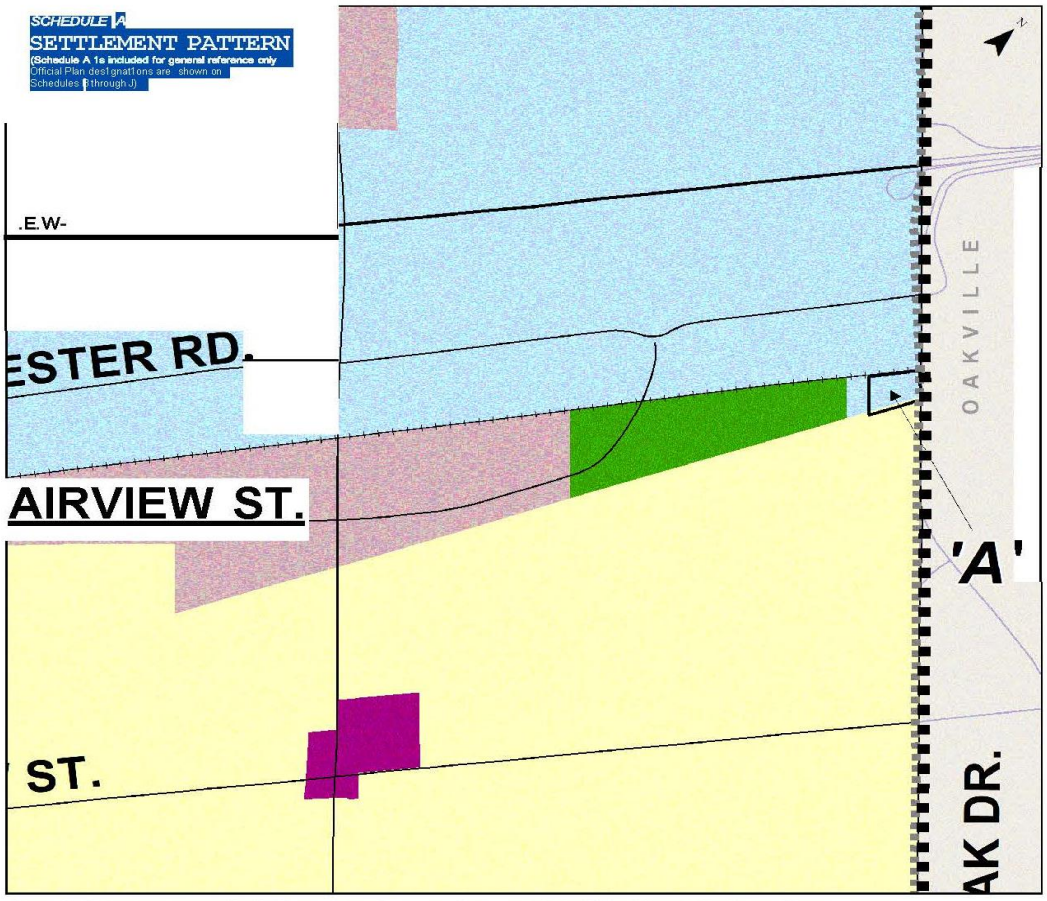
This Official Plan Amendment will be implemented in accordance with the appropriate "Implementation" policies of Part VI of the Official Plan of the Burlington Planning Area.

Schedule A

AMENDMENT No. 145 TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

Schedule 'A'

File No. 505-06/04



Area 'A' to be amended from Employment Lands' to 'Residential Areas'

Legend

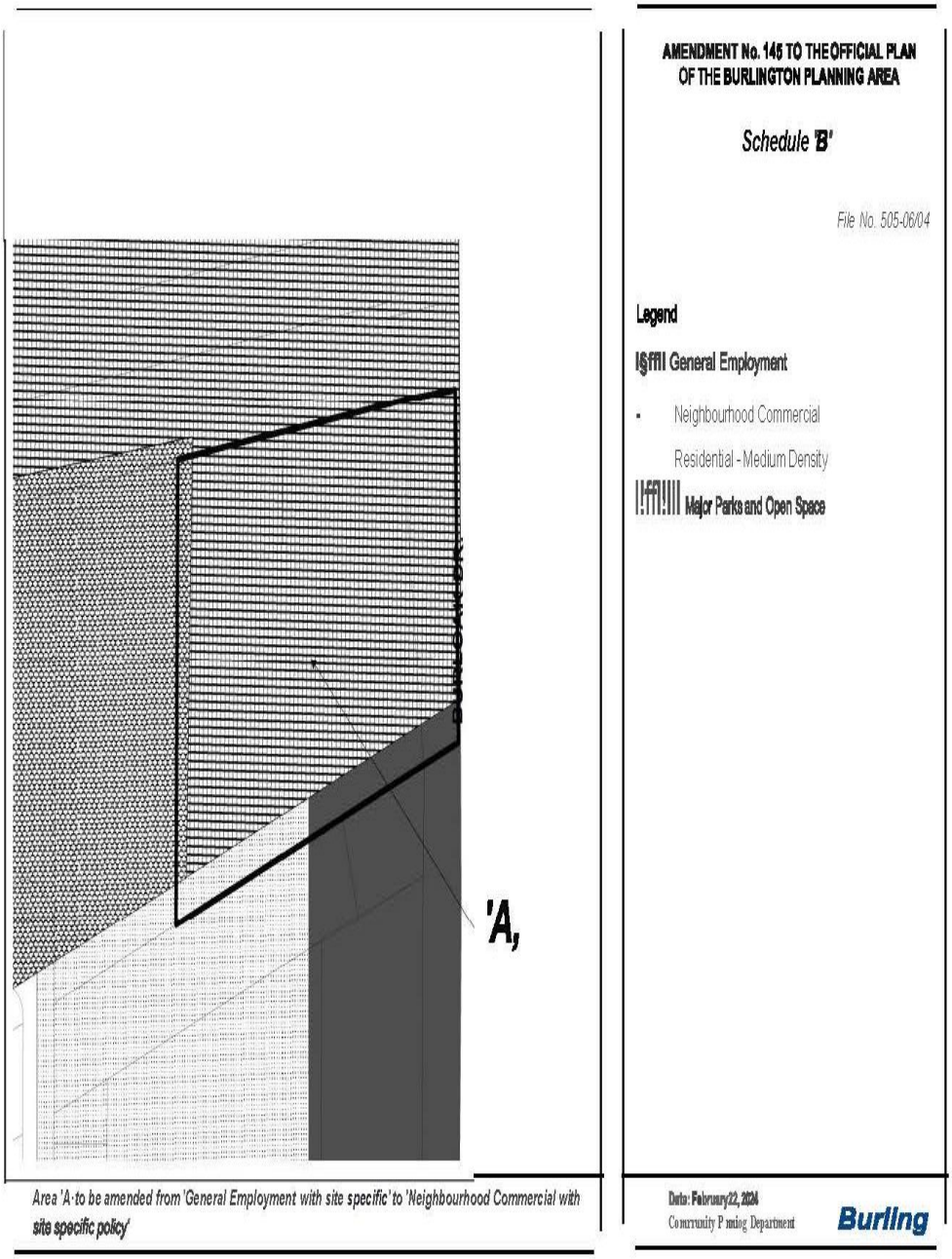
Residential Areas
Employment Lands
1111 Major Retail Areas
C:=J Mixed Use Activity Areas
1111 Natural Features/Open Space
C:=J Rural Lands
C:=J Rural Settlement Area
North Aldershot Planning Area
■ ■ ■ Urban Planning Area Boundary

*NOTE: For information on Deferrals and Referrals (*Dor *R), please see the Explanatory Notes of the Official Plan.*

JUNE 2011

Burlington

Schedule B


AMENDMENT No. 145 TO THE OFFICIAL PLAN
OF THE BURLINGTON PLANNING AREA
Schedule 'B'
File No. 505-06/04
Legend
General Employment
Neighbourhood Commercial
Residential - Medium Density
Major Parks and Open Space
'A,
Area 'A' to be amended from 'General Employment with site specific' to 'Neighbourhood Commercial with site specific policy'
Date: February 22, 2024
Community Planning Department
Burling

ATTACHMENT 2

By-law amendment

To amend By-law 2020 of the City of Burlington, as amended, to rezone the lands located at 800 Burloak Drive from General Employment to Neighbourhood Commercial.

1. Zoning By-law 2020, Map Number 27-E of PART 15, as amended, is hereby amended as shown on Schedule “A” attached to this By-law.

2. The lands marked as “Area A” on Schedule “A” attached hereto are hereby rezoned from General Employment 2 – Site Exception 48 (GE2-48) zone to the Neighbourhood Commercial One - Site Exception 48 (H- CN1-48) zone.

3. Part 11 of By-law 2020, as amended, Holding Zone Provisions, is hereby amended by the addition of the following section to Appendix A:

   #84. H-CN1-48 Map 27-E

   The Holding symbol shall be removed from the zone designation by way of an amending zoning by-law following:

   a) The owner submits a Record of Site Condition, filed with the Ministry of Environment, Conservation and Parks, that indicates the site is suitable for the proposed land use to the satisfaction of Halton Region and Director of Engineering Services;

   b) The owner submits copies of the final Phase One and Phase Two Environmental Site Assessment, which support the Record of Site Condition filing, to the satisfaction of the Region of Halton and Director of Engineering Services; and,

   c) The owner submits an updated Functional Servicing Report to the satisfaction of the Region of Halton and Director of Engineering Services.

4. PART 14 of By-law 2020, as amended, Exceptions to Zone Designations, is amended by replacing Exception 48 for the lands designated as “Part A” on Schedule “A” attached hereto with the following:

Exception 48	Zone H-CN1-48	Map 27-E	Amendment 2020.471	Enacted

1. Additional Permitted Uses:

a) Dwelling units on the fourth floor

2. Regulations:

a) Maximum Building Height: 4 storeys, not including mechanical penthouse

b) Notwithstanding Part 1, Section 2.26, 4) access to the parking lot will be provided through the adjacent property to the south at 5270 Fairview Street (Sherwood Forest Park Trail) as known as legal description CON 3 SDS Part Lot 1, Registered Plan 20R-15215, PARTS 1,2,3.

Schedule A

SCHEDULE "A"



Area 'A'

to be rezoned from GE2-48 to H-CN1-48

SCHEDULE 'A' TO BY-LAW 2020.471 AMENDING MAP NO. 27E PART 15, BY-LAW 2020 AS AMENDED.
PASSED THE xxth DAY OF MARCH, 2024

MAYOR

CITY CLERK

4 TERANET Burlington
Community Planning Department