

**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

**Tribunaux de l'environnement et de
l'aménagement du territoire Ontario**

Tribunal d'appel de l'aménagement
local

655 rue Bay, suite 1500
Toronto ON M5G 1E5
Téléphone: (416) 212-6349
Sans Frais: 1-866-448-2248
Site Web: www.elto.gov.on.ca



December 17, 2018

Sent by email

Philippa Von Ziegenweidt
CAMPP Windsor Essex Residents Association
6396 Riverside Dr E
Windsor, ON N8S 1B9
windsorcampp@gmail.com

Subject: Case Number: PL180842
File Number: PL180843
Municipality: Windsor
Zoning By-law Number: 132-2018
Property Location: Southeast corner of 9th Concession Rd and County Rd 42
Applicant: Windsor Regional Hospital
Appellant: CAMPP Windsor Essex Residents Association
Re: Preliminary Screening of the Notice of Appeal

This letter is to advise that the Tribunal has now completed its preliminary screening of your notice of appeal in accordance with Rule 26.05 of the Tribunal's Rules of Practice and Procedure ("Rules"). The Tribunal has made a preliminary determination that this notice of appeal is **valid** as it provides an explanation for the appeal in accordance with s. 34(19.0.2) of the *Planning Act*.

Appeal Record, Case Synopsis and Responding Appeal Record, Case Synopsis

Please review Rules 26.01 to 26.20 (inclusive) attached to this letter.

Rule 26.11 of the Rules requires the Appellant to file three copies of an appeal record and a case synopsis with the Tribunal Registrar, to the attention of the Case Coordinator, Tamara Zwarycz, within 20 days of the date of this letter, in both paper copy and electronic format (USB key). This Rule also requires the Appellant to file one additional copy of the appeal record and case synopsis upon the municipality and the approval authority. Do not send to the Tribunal by email.

The municipality and the approval authority must advise the Tribunal, in writing, within 10 days of the receipt of the Appellant's appeal record, of their intent to serve and file a responding appeal record or a case synopsis. If a municipality or approval authority chooses to file a responding appeal record or a case synopsis, 3 copies must be filed, in both paper and electronic format (USB key), with the Tribunal Registrar, to the attention of the Case Coordinator, within 20 days of receiving the appellants' appeal record. One copy must also be sent to the appellant.

Appellant and responding documentation must not be submitted to the Tribunal Registrar or Case Coordinator by email.

A Dispute with the Preliminary Screening of the Notice of Appeal

The municipality, the approval authority or a person whose application is the subject of the appeal who wishes to dispute the Tribunal's preliminary determination that the notice of appeal is valid, may contact the Tribunal's Case Coordinator to request a date for a motion in accordance with Rule 26.06 and Rule 10, **within 15 days of the date of this letter, which is January 2, 2019.** Supporting motion materials are required to be exchanged within the dates set out in Rule 10.

The Tribunal will now proceed to schedule a case management conference in accordance with Rule 26.20 of the Rules. The Tribunal will not canvass the availability of counsel prior to scheduling a date for the case management conference.

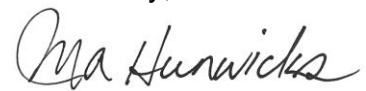
Mediation

Mediation is an option available where the parties consent to this process. Mediation is intended to provide the parties with a more satisfactory manner in which to reach a resolution in the same or lesser timeframe as the traditional adjudicative process. Parties should contact Tamara Zwarycz at Tamara.Zwarycz@ontario.ca if they are interested in mediation.

We are committed to providing accessible 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 by emailing ELTO@ontario.ca. If you require documents in formats other than conventional print, or if you have specific accommodation needs, please let us know so we can make arrangements in advance.

For general information concerning the Tribunal's policies and procedures visit our website at www.elto.gov.on.ca or you may contact the Tribunal's offices at (416) 212-6349.

Yours truly,

A handwritten signature in cursive script that reads "Mary Ann Hunwicks".

Mary Ann Hunwicks
Registrar

c.c.: Kim Mullin
Valerie Critchley
Wira Vendrasco
Philip McCullough
Karl Tanner

Encl.: Rules 26.01 to 26.20

LOCAL PLANNING APPEAL TRIBUNAL RULES ON INITIATING PROCEEDINGS UNDER SUBSECTIONS 17(24), (36) AND (40), 22 (7), 34(11) AND (19) AND 51(34) OF THE *PLANNING ACT*

26.01 Application This Rule applies to appeals initiated under any of subsections 17(24), (36) and (40), 22(7), 34(11) and (19) and 51(34) of the *Planning Act* of a decision made by a municipality or approval authority or with respect to the failure of a municipality or approval authority to make a decision under these provisions. The Rules in Part I also apply to these proceedings, unless stated otherwise in Part II that a specific rule is not applicable or when otherwise directed by the Tribunal that a certain rule is not applicable in that proceeding.

26.02 Rules not Applicable The following Rules in Part I are not applicable to proceedings identified as appeals to the Tribunal authorized under subsection 17 (24), (36) and (40), 22 (7), 34 (11) and (19) and 51 (34) of the *Planning Act* **save and except** where there is an appeal that arises after the municipality or approval authority was given an opportunity to make a new decision (pursuant to subsection 17 (24) and (36), 22 (7), 34 (11) and (19) of the *Planning Act*) following the Order of the Tribunal to remit the matter to the municipality:

- Rule 6.04
- Rule 7.04
- Rule 8.01(e)
- Rule 9
- Rule 13.01(a) to (g), inclusive
- Rule 19

26.03 Additional Definitions The following definitions are applicable to proceedings under Part II:

“appeal record” or *“responding appeal record”* are those records described in Rule 26 that shall include, as a minimum, a supporting case synopsis;

“case management conference” is a hearing event which is directed by the Tribunal in an appeal initiated pursuant to and authorized by subsections 17(24), 17(36) and 17(40), 22(7), 34(11), 34(19) and 51(34) of the *Planning Act*;

“certificate of service” is the form approved by the Tribunal that must be submitted at least 30 days before the date of the case management conference by a person other than an Appellant, municipality or approval authority who wishes to participate in an appeal under subsections 17(24), 17(36), 17(40), 22(7), 34(11), 34(19) or 51(34) of the *Planning Act*;

“new decision” means the disposition of the municipality or the approval authority in respect of an appeal authorized under subsection 17(24), 17(36), 22(7), 34(11) and 34(19) of the *Planning Act* for which the municipality or approval authority was provided

an opportunity to reconsider its decision or non-decision following a hearing by the Tribunal and Order to remit the matter to the municipality:

“*interrogatory procedure*” means the procedure approved by the Tribunal that directs a party to request in writing that another party to the proceeding provide written information or supporting documentation following a case management conference and prior to the hearing of the appeal; and,

“*validation*” or “*validity of the notice of appeal*” means the preliminary screening exercise to determine whether or not the content in the notice of appeal filed in the intended proceeding provides an explanation of the appeal pursuant to subsections 17(25), 17(37), 17(41), 22(8), 34 (11.0.0.04), 34(19.0.2) and 51(34) of the *Planning Act*.

26.04 Enhanced Municipal Record When an appeal is filed with the municipality or approval authority in a proceeding to which the rules of Part II apply, the municipality or approval authority shall prepare a municipal record as prescribed by regulation under the *Planning Act* and in accordance with Rule 5.04., and in addition to those requirements, shall organize the record of documents and materials in chronological order with a contents page(s) outlining the title or a concise description of each entry separated by tabs and capable of being copied and bound or secured in a binder(s). The municipality or approval authority shall provide a paper copy of the municipal record to the Tribunal, as well as one electronic copy (pursuant to Rule 7.01). The municipality or approval authority shall also provide one electronic copy to each person who has filed an appeal, and shall maintain one paper copy with the clerk of the municipality, which shall be available for inspection by any person or copied at a reasonable cost during business hours.

26.05 Preliminary Screening of the Notice of Appeal The Tribunal shall, within 10 days of the Registrar’s acknowledgement of receipt of a notice of appeal, undertake a screening to make a preliminary determination of the validity of the notice of appeal, and shall thereafter advise the person who filed the notice, and the municipality and the approval authority, of the result of this screening exercise.

26.06 Dispute as to a Valid Appeal Where the screening has made a preliminary determination that a notice of appeal is valid, the municipality, the approval authority or a party including a person whose application is the subject of the appeal, if they wish to challenge that preliminary determination, may request a date for a motion from the Tribunal, with notice to the Appellant, to set aside the validation of the notice of appeal and to seek an order to dismiss the appeal without a hearing. The requirements in Rule 10 will apply to the motion.

26.07 Tribunal Member May Initiate a Motion A Member may initiate a motion, at any time in a proceeding, and direct the municipality, approval authority or a party including a person whose application is the subject of the appeal, to file and exchange submissions necessary for the Tribunal to inquire into the matter of its jurisdiction over the matter raised in the notice of appeal.

26.08 Dispute as to a Not Valid Appeal Where the Tribunal has made a preliminary determination that an appeal is not valid, the Tribunal shall notify the person who filed the appeal. A person so notified may within 15 days make a written motion to the Tribunal under Rule 10, challenging the preliminary determination that an appeal is not valid and shall provide the motion materials to the municipality, approval authority and any other Appellants. The requirements in Rule 10 will apply to this motion.

26.09 The Effect of a Ruling under RULE 26.06, RULE 26.07 and RULE 26.08 In the event the Tribunal makes a determination that an appeal is not valid, the appeal is dismissed. In the event the Tribunal sets aside the preliminary determination and finds that the appeal is valid, the appeal will proceed in accordance with the process outlined by these Rules.

26.10 Commencement of the Proceeding Where the disposition of an appeal is subject to a prescribed timeline, the commencement of the period to which the timeline applies shall be the date the Registrar advises the Appellant(s) the preliminary screening exercise has determined the appeal is valid.

26.11 Appeal Record and Case Synopsis When an Appellant is notified by the Tribunal that a preliminary determination has been made that an appeal is valid, the Appellant shall, within twenty (20) days of receipt of the notice, file three copies of an appeal record and case synopsis with the Registrar and serve one copy upon the municipality and the approval authority.

26.12 Contents of Appeal Record The appeal record referred to in Rule 26.11 may contain a copy of any document or part of any document that is contained in the municipal record or, in the alternative to avoid duplication, the Appellant may reference any document or part of a document contained in the municipal record that they intend to rely on. At a minimum, the appeal record shall contain:

- a) a table of contents describing each document in the appeal record;
- b) a copy of the notice of appeal;
- c) a copy of the resolution of council or Notice of Decision of council/approval authority from which the appeal is being taken or a declaration that there has been a failure to make a decision within the prescribed time limit;
- d) a list or a compilation of excerpted portions of the documents contained in the municipal record that the Appellant will rely on;
- e) an affidavit by a person, or persons, setting out the material facts associated with the application, and where the person can be qualified to offer opinion evidence on a matter, that person's opinion with respect to the matters in issue in relation to the appeal of the decision or non-decision, along with a signed copy of the acknowledgment form attached to the Rules, and the person's résumé supporting their qualification to present opinion evidence;

- f) a list of the relevant and applicable statutory and policy provisions which relate to the application and the matters in issue along with extracts of those provisions; and
- g) a chronology of the relevant policy documents that are applicable to the proposal and the dates such documents were adopted, enacted or otherwise took effect.

In addition, the appeal record may contain any relevant document or material on which the Appellant will rely that:

- a) was available to the municipality and its council during council's consideration of the matter but was not included in the municipal record;
- b) in the opinion of the Appellant, should have been available to council during its consideration of the matter, by reason of it being in the possession of the municipality, but was not put before council and has not been included in the municipal record; or
- c) in the event of an appeal of a non-decision of council, any documents or reports which update the application that is the subject of the appeal.

26.13 Contents of the Appellant's Case Synopsis An Appellant shall file an Appellant's case synopsis in the following form:

- (1) The Appellant's case synopsis shall consist of:
 - a) the Appellant's name and contact information;
 - b) where an application is the subject of an appeal, a summary of the application;
 - c) a statement of the decision made by the council or the approval authority or a statement that no decision has been taken in time following a complete application;
 - d) the nature of the appeal and a list of the issues raised in the appeal relating to questions of consistency with a policy statement issued under section 3(1) of the *Planning Act* and conformity or conflict with a provincial plan, or with an applicable official plan;
 - e) a detailed review of the facts as referenced from the combined records (the municipal or appeal records), the sections of the subject policies or plans, as the case may be, and the arguments, or opinions that address the issues raised;
 - f) a listing of relevant authorities as may be available (statutes, case law and applicable Tribunal cases) and an analysis or explanation of how the authorities inform the issues;
 - g) the text of all relevant excerpted provisions of provincial planning policies, planning instruments, statutes, regulations or by-laws cited;
 - h) a statement of the order or other resolution sought from the tribunal; and
 - i) in the event that an oral hearing is afforded by the tribunal, an estimate of the amount of time needed for oral submissions, which in total shall not exceed 75 minutes for each party.

(2) References to the municipal record or appeal record shall be by volume, tab, page and line number, where applicable. Paragraphs shall be numbered consecutively throughout the case synopsis.

(3) The Appellant's case synopsis shall not exceed 30 pages in length unless authorized by the Tribunal (It is expected that the case synopsis will be printed in 12 point Arial font, with one and a half spaces between the lines).

26.14 Time for Service of Responding Material The municipality or approval authority shall advise the Tribunal in writing, within 10 days of its receipt of the appeal record, of their intent to serve and file responding material, and, if one or both elect to serve and file such material, each shall serve it on the Appellant and file it with the Registrar within 20 days of receipt of the appeal record.

26.15 Responding Appeal Record Where the municipality or approval authority is of the opinion that the Appellant's appeal record is incomplete, each may file three copies of a responding appeal record, with the Registrar, and serve one copy upon the Appellant, containing, in consecutively numbered pages arranged in the following order:

- a) a table of contents describing each additional document in the responding appeal record;
- b) a copy of any documentation which it believes formed part of the process associated with the application, and is material to the determination of the issues and has been omitted by the Appellant; and
- c) an affidavit by a person, or persons, setting out the material facts associated with the appeal, and where the person can be qualified to offer opinion evidence on a matter, that person's opinion with respect to the issues raised by the Appellant, in relation to the appeal of the decision or non-decision, along with a signed copy of the acknowledgment form attached to the Rules, and the person's résumé supporting their qualification to present opinion evidence.

26.16 Responding Case Synopsis and Contents

(1) The municipality or approval authority may each file three copies of a case synopsis with the Registrar, and, serve one copy upon the Appellant, and may do so irrespective of whether they filed a responding appeal record. A case synopsis shall contain the following:

- (a) a concise statement confirming the Respondent's agreement or disagreement with the Appellant's identification of the original application(s) made by the applicant, the decision or non-decision being appealed by the Appellant and summarizing the nature of the decision(s) made by the Council or the Approval Authority, and where the Respondent disagrees, providing the Respondent's position;
- (b) a concise overview statement describing the Respondent's position on the nature of the appeal and the Appellant's issues relating to questions of consistency with

- a policy statement issued under section 3(1) of the *Planning Act* and conformity or conflict with a provincial plan or applicable official plan;
- (c) a concise summary of the facts in the Appellant's summary of facts relevant to the identified issues of consistency, conformity or conflict in the appeal that the Respondent accepts as correct and those facts with which the Respondent disagrees, and a concise summary of any additional facts relied on, with such reference to the contents of the municipal record, Appellant's appeal record, or the Respondent's appeal record as is necessary;
 - (d) the position of the Respondent with respect to each issue raised by the Appellant, immediately followed by a concise argument with reference to the facts, law, policies, plans, and authorities relating to that issue;
 - (e) a statement of any additional issues of consistency, conformity or conflict raised, immediately followed by a concise argument with reference to the facts, law, policies, plans, and authorities relating to each such additional issue;
 - (f) a listing of relevant authorities as may be available (statutes, case law and applicable Tribunal cases) and an analysis or explanation of how the authorities inform the issues;
 - (g) the text of all relevant excerpted provisions of provincial planning policies, planning instruments, statutes, regulations or by-laws cited;
 - (h) a statement of the order that the Tribunal will be asked to make; and
 - (i) in the event that an oral hearing is afforded by the Tribunal, an estimate of the amount of time needed for oral submissions, which in total shall not exceed 75 minutes for each party.
- (2) References to the municipal record and Appellant's appeal record or the Respondent's appeal record shall be by volume, tab, page and line number, where applicable. Paragraphs shall be numbered consecutively throughout the case synopsis.
- (3) The Respondent's case synopsis shall not exceed 30 pages in length, unless authorized by the Tribunal (It is expected that the case synopsis will be printed in 12 point Arial font, with one and a half spaces between the lines).

26.17 Determination to Hold a Case Management Conference The Tribunal shall direct the Appellant, municipality or approval authority to participate in a case management conference when the screening has made a preliminary determination that a notice of appeal is valid.

26.18 Notice Period and Directions for the Case Management Conference The notice period for the case management conference shall be 75 days unless otherwise directed by the Tribunal. The Tribunal will also direct the Appellant, municipality or approval authority to provide notice of the time and place of the case management conference, and to file an affidavit as directed by the Tribunal to confirm service of the notice.

26.19 Participation in the Case Management Conference A person other than the Appellant, the municipality or approval authority who wishes to participate in an appeal initiated under subsections 17(24), 17(36), 17(40) 22(7), 34 (11), 34(19) or 51(34) of the *Planning Act* must file a written submission with the Registrar, at least 30 days before the date of the case management conference, and that submission shall explain the nature of their interest in the matter and how their participation will assist the Tribunal in determining the issues in the proceeding. In addition, a person shall explain whether the decision or non-decision of the municipality or approval authority was inconsistent with a policy statement under subsection 3(1) of the *Planning Act*, fails to conform with or conflicts with a provincial plan, or fails to conform with an applicable official plan. Any submission shall also be provided to the municipality or to the approval authority whose decision or failure to make a decision is appealed and a certificate of service shall be filed with the Registrar to confirm service of any submission.

26.20 Case Management Conference The Tribunal may direct the Appellant, municipality or approval authority whose decision or failure to make a decision is being appealed to participate in a case management conference conducted by a Member. A case management conference may include settlement conferences, motions or preliminary hearing matters. At a case management conference the Tribunal shall:

- (a) identify persons other than the Appellant, the municipality or approval authority, who wish to participate in the appeal, based on written submissions provided by these persons to the Tribunal;
- (b) determine, from the written submissions provided, whether a person may participate in the appeal as an additional party, or participant, on such terms as the Tribunal may determine;
- (c) identify facts or evidence the parties may agree upon or on which the Tribunal may make a binding decision;
- (d) identify, define or narrow the issues raised in the appeal;
- (e) obtain admissions that may simplify the hearing, which may include the examination of persons by the Tribunal as part of the case management conference;
- (f) provide directions for disclosure of information among the parties or persons who may participate in the appeal;
- (g) provide directions that a person or persons attend the hearing for examination by the Tribunal, including persons to provide expert opinion evidence;
- (h) discuss opportunities for settlement, including the possible use of mediation or other dispute resolution processes;
- (i) fix a date and place for the hearing and estimate its length;
- (j) determine the format of a hearing, including whether a hearing be conducted in writing and any applicable dates to exchange documentation or submissions;
- (k) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (l) address the production and cost sharing of joint document books; and
- (m) deal with any other matter that may assist in a fair, just, and expeditious resolution of the issues or proceeding.

April 3, 2018