September 10, 2018

Local Planning Appeal Tribunal
Ontario

Attention: Tomislav Saric

Dear Mr. Saric:

Re: LPAT File: PL180613 — 7 Chestnut Street, Ottawa

I am the appellant in the above-cited matter.

This is in response to the applicant lawyer's (Emma Blanchard) letter to you dated September 10, 2018.

Ms. Blanchard asks "that the LPAT consider a direction that the [October 3] hearing shall be restricted to the issue of appropriate development", which would exclude the constitutional and jurisdictional issues.

In considering Ms. Blanchard's *ad hoc* request, please note the following.

1. The tribunal's authority to strike out parts of an appeal is strictly delimited by section 45(17) of the *Planning Act*.

2. My August 31, 2018 submissions include a relevant section entitled "LPAT's jurisdiction to hear the constitutional challenge and duty to hear the jurisdictional challenge" (at pages 14 to 16).

3. It is unthinkable that the tribunal would refuse to hear a challenge to its own jurisdiction, and the full argument of the said challenge.

4. Section 11(2) of the *Local Planning Appeal Tribunal Act, 2017* has:

> Power to determine law and fact
> (2) The Tribunal has authority to hear and determine all questions of law or of fact with respect to all matters within its jurisdiction, unless limited by this Act or any other general or special Act.

5. The Supreme Court has consistently been rather clear on a tribunal's duty to hear constitutional issues. For example:

> [21] The s. 32 jurisprudence of this Court has for the most part focused on the first type of *Charter* violation. There is no doubt, however, that the *Charter* also applies to action taken under statutory authority. The rationale for this rule flows inexorably from the logical structure of s. 32. As Professor Hogg explains in his *Constitutional Law of Canada* (3rd ed. 1992 (loose-leaf)), vol. 1, at pp. 34-8.3 and 34-9:
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> Action taken under statutory authority is valid only if it is within the scope of that authority. Since neither Parliament nor a Legislature can itself pass a law in breach of the Charter, neither body can authorize action which would be in breach of the Charter. Thus, the limitations on statutory authority which are imposed by the Charter will flow down the chain of statutory authority and apply to regulations, by-laws, orders, decisions and all other action (whether legislative, administrative or judicial) which depends for its validity on statutory authority.
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> The sentiment of Lord Atkin in speaking of a constitutional prohibition addressed solely at the legislative branch is also apposite: "The Constitution", he wrote, "is not to be mocked by substituting executive for legislative interference with freedom"; see *James v. Cowan*, [1932] A.C. 542 (P.C. Australia), at p. 558.
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> ***Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624, 1997 CanLII 327 (SCC), para. 21**

6. Finally, given jurisprudence, it is the applicant who has the onus to establish that the tribunal cannot hear the constitutional issue.

I note also that the notion that "Time is of the essence to our client" advanced by Ms. Blanchard is incompatible with the concept of a "minor variance".

Sincerely,

Dr. Hadi Salmasian
Appellant
[redacted] Ottawa ON K1S0Z8
Phone: [redacted]
Email [redacted]