

APPENDIX B

**Divisional Court File No.
Ontario Municipal Board File No. PL1180210**

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

IN THE MATTER OF an appeal under Section 37 of the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, CHAPTER 23, from the Decision of the Local Planning Appeal Tribunal dated October 25, 2018.

AND IN THE MATTER OF an appeal to the Local Planning Appeal Tribunal of City of Toronto Official Plan Amendment (OPA) No. 395 by CRAFT Acquisitions Corp. and P.I.T.S. Development Inc., Canadian National Railway Company and Toronto Terminals Railway Company Ltd. under Section 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13 as amended.

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

CITY OF TORONTO

Moving Party
(Appellant)

and

**CRAFT ACQUISITIONS CORP. and P.I.T.S DEVELOPMENT INC.; CANADIAN
NATIONAL RAILWAY COMPANY and TORONTO TERMINALS RAILWAY
COMPANY LTD.**

Respondents
(Respondents)

**NOTICE OF MOTION
For Leave to Appeal**

THE MOVING PARTY, City of Toronto (the "City"), will make a motion to the Divisional Court on a date and time to be fixed by the Registrar at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally.

THIS MOTION IS FOR:

1. Leave to appeal to the Divisional Court from the Decision of the Local Planning Appeal Tribunal (the "Tribunal"), dated October 25, 2018, LPAT File No. PL180210.
2. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Local Planning Appeal Tribunal (the "Tribunal") erred in law and exceeded its jurisdiction by requiring affidavit evidence, including opinion evidence, to be submitted as a mandatory part of an appeal record for an appeal governed by section 38 of the LPATA;
2. The Tribunal erred in law and exceeded its jurisdiction by permitting affidavit evidence, including opinion evidence, to be submitted as part of a responding appeal record for an appeal governed by section 38 of the LPATA;
3. The Tribunal erred in law and exceeded its jurisdiction by directing affidavit evidence which is contradictory to and inconsistent with the legislation governing section 38 appeals, including but not limited to the prohibition on a party adducing evidence (s. 43(3));
4. At a mandatory case management conference, the parties to the appeal requested the Tribunal to state a case to the Divisional Court seeking guidance on whether the Tribunal has the jurisdiction to direct such evidence and if so, what the consequences of that direction are in light of other limiting provisions of the legislation governing section 38 appeals;
5. The parties to the appeal agreed upon four questions to be submitted to the Divisional Court and jointly presented those questions to the Tribunal;
6. The first question jointly submitted was whether the Tribunal had jurisdiction to require or permit such evidence and as such, was the "threshold question" from which the other three questions derived; in other words, if the first question was

answered in the negative, that the Tribunal did not possess such jurisdiction, the other three questions were irrelevant;

7. The Tribunal agreed to state the case to the Divisional Court but excluded the first question regarding its own jurisdiction to direct the production of affidavits in section 38 appeals;
8. The Tribunal erred in law by excluding the threshold question from the stated case and thus stating a case that eliminates a threshold issue that the parties believed requires judicial review and upon which the remaining questions are based;
9. The Tribunal erred in law by excluding the threshold question from the stated case without giving reasons for doing so;
10. The Tribunal erred in law by asserting in question 3 of the stated case the answer to the threshold question effectively determining that it had the jurisdiction to direct the production of affidavits in a section 38 appeal;
11. The Tribunal erred in law by answering the threshold question without giving reasons for doing so;
12. The Tribunal erred in law by denying procedural fairness to the parties by preventing them from arguing the threshold question as part of the stated case;
13. The Tribunal's decision contains errors of law and is of sufficient importance to warrant the attention of the Divisional Court as the Tribunal's decision will impact the procedure for every section 38 appeal across the Province of Ontario and affect the substantive rights of the parties to those appeals;
14. There is doubt as to the correctness of the Tribunal's decision;
15. The *Planning Act*, R.S.O. 1990 c.P.13, as amended;

16. The *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, CHAPTER 23; and Ontario Regulation 102/18;
17. The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22;
18. The LPAT Rules of Practice and Procedure;
19. Rule 61.03 of the *Rules of Civil Procedure*; and
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The pleadings and proceedings before the Local Planning Appeal Tribunal;
2. Decision of the Local Planning Appeal Tribunal, dated October 25, 2018, LPAT File No. PL180210; and

3. Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated: November 8, 2018

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