

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

B E T W E E N:

**RESIDENTS FOR SUSTAINABLE DEVELOPMENT  
IN GUELPH**

Moving Party

- and -

**6 & 7 DEVELOPMENTS LIMITED and  
THE CORPORATION OF THE CITY OF GUELPH**

Respondents

**Proceeding commenced pursuant to section 96 of the  
*Planning Act, R.S.O. 1990, c. P. 13.***

**NOTICE OF MOTION  
(Leave to Appeal)**

**THE MOVING PARTY** will make a motion to a judge on a date to be fixed by the Registrar of the Divisional Court, at 10:00 a.m. or as soon after that time as the motion can be heard, at the Court House, 7755 Hurontario Street Brampton, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an order granting leave to appeal to the moving party, Residents for Sustainable Development in Guelph, from the decision of the Ontario Municipal Board (the “Board”) dated December 29, 2004;
- (b) costs of this motion to be reserved to the panel of the Divisional Court hearing the appeal;  
and
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) the Board erred in law by failing to interpret section 7.4.24(2) of Guelph’s Official Plan in accordance with section 2(a) of the Charter of Rights and Freedoms (the “Charter”);
- (b) the Board erred in law in finding that the Charter cannot be raised by a party to this proceeding;
- (c) the Board erred in law in finding that a direct causal link is required before the Charter can be considered in a proceeding;

- (d) the Board erred in law by refusing to allow a party to the proceeding to rely on evidence adduced at the hearing regarding Charter issues;
- (e) the Board erred in law by making findings of fact and law regarding Charter issues that were not supported by the evidence;
- (f) the Board erred in law by misinterpreting and incorrectly applying the principles established by the Supreme Court of Canada regarding section 2(a) of the Charter;
- (g) this Honourable Court has already held that the Board has no greater knowledge or expertise than the courts in the issues to be raised in this appeal. Therefore, no special deference should be given to the Board's decision;
- (h) issues to be raised in this appeal have broad implications for planning law and practice throughout Ontario;
- (i) issues to be raised in this appeal have already been found by this Honourable Court to be of sufficient importance to merit the attention of the Divisional Court;
- (j) based on the foregoing there is good reason to doubt the correctness of the Board's decision in this case;

- (k) the *Planning Act*, R.S.O. 1990, c. P. 13,
- (l) Rule 61 of the Rules of Civil Procedure, and
- (m) 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:

- (a) the decision of the Ontario Municipal Board dated December 29, 2004;
- (b) the exhibits relevant to the disposition of this motion; and
- (c) such further or other evidence as counsel may advise and this Honourable Court may permit.

DATED: January 12, 2005

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