

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

**VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAH HOLDINGS INC.**

Applicants

– and –

**ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION**

Respondents

APPLICATION UNDER Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,
c. B.16.

**MOTION RECORD
(RETURNABLE DECEMBER 6, 2017)**

**MILLER THOMSON LLP
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Lawyers for KPMG Inc., in its capacity as
Liquidator of Tarn Financial Corporation.

Court File No.: CV-17-11697-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

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INDEX

TAB	DOCUMENT
1	Notice of Motion dated December 3, 2017
A	Schedule “A” – Proposed Notice of Appeal in respect of the Zoning Amendment Application
B	Schedule “B” – Proposed Notice of Appeal in respect of the Site Plan Application
C	Schedule “C” – Service List as at December 3, 2017
2	Draft Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAH HOLDINGS INC.

Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION

Respondents

APPLICATION UNDER Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,
c. B.16.

**NOTICE OF MOTION
(Returnable December 6, 2017)**

KPMG Inc. (“**KPMG**”), in its capacity as court appointed liquidator (the “**Liquidator**”) pursuant to sections 207 and 248 of the Ontario *Business Corporations Act* (“**OBCA**”) of the effects and estate of Tarn Financial Corporation (“**Tarn**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) effective on September 25, 2017 will make a motion to a Judge presiding over the Commercial List on Wednesday, December 6, 2017 at 9:30 a.m. or as soon after that time as the Motion can be heard at the Court house located at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order abridging and validating the time for service of the Notice of Motion, such that this Motion is properly returnable and further service thereof is dispensed with;

2. An Order authorizing the Liquidator to file a Notice of Appeal with the Ontario Municipal Board (the “**OMB**”), substantially in the form attached as Schedule “A” hereto (the “**Zoning Amendment Appeal**”), pursuant to subsection 34(11) of the *Planning Act* (Ontario) from the Application to Amend the Zoning By-law bearing Application No.: 15 167709 ESC 40 OZ (the “**Zoning Amendment Application**”) in respect of the real property owned by Tarn and municipally known as 2035 Kennedy Road, Toronto, Ontario (the “**Property**”);
3. An Order authorizing the Liquidator to file a Notice of Appeal with the OMB substantially in the form attached as Schedule “B” hereto (the “**Site Plan Appeal**” and collectively with the Zoning Amendment Appeal, the “**OMB Appeals**”), pursuant to subsection 114(15) of the *City of Toronto Act, 2006* from the Application for Site Plan Approval bearing Application No.: 16 132832 ESC 40 SA (the “**Site Plan Application**”) in respect of the Property; and
4. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On February 13, 2017, Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk and Kaan Holdings Inc. (collectively, the “**Applicants**”) commenced an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 seeking an Order winding up Tarn and appointing KPMG as liquidator for that purpose. The Applicants are shareholders of Tarn and collectively hold 60% of the common shares of Tarn. The remaining 40% of the common shares of Tarn are held by the Respondent, SAMM Capital Holdings Inc. (“**SAMM**”), a company owned by the Respondent, Ali Akman (“**Akman**”);
2. The Application was heard by Justice Lederman on August 11, 2017 and on September 15, 2017 His Honour ordered the winding up of Tarn pursuant to the Winding Up Order;

3. Pursuant to the Winding-Up Order, KPMG was appointed as Liquidator of the effects and estate of Tarn effective from September 25, 2017, with the powers and obligations set forth in Part XVI of the OBCA and the Winding Up Order;
4. On October 6, 2017, Akman and SAMM filed a Notice of Appeal with the Divisional Court of the Ontario Superior Court of Justice appealing the Winding-Up Order (the “**Appeal**”). An Order expediting the hearing of the Appeal was granted on October 26, 2017 and the Appeal is scheduled to be heard on December 22, 2017;
5. The assets, property and undertaking of Tarn include the Delta Toronto East Hotel and adjoining development lands being developed by Tarn, through its wholly-owned subsidiary, Tarn Construction Corporation (“**Tarn Construction**”), as a development known as “The Kennedys” (the “**Development Project**”) all located on the Property;
6. The Liquidator reported on the current status of the Development Project in its First Report dated November 13, 2017 (the “**First Report**”);
7. On September 27, 2017 the Liquidator and its counsel, Miller Thomson LLP (“**Miller Thomson**”), met with Bennett Jones LLP (“**Bennett Jones**”), which acted as Tarn’s municipal, development and real estate counsel prior to the winding up and whose retainer has been continued with the Liquidator given their involvement with the Property, to discuss the status of the zoning and site plan submissions to the City of Toronto (the “**City**”) for the Development Project. Bennett Jones provided the Liquidator and Miller Thomson with an overview of the background surrounding the Development Project as well as a status update on the related plans, applications, permits and reports;
8. As set out in the First Report, as of the date of the Winding Up Order, construction of Phase 1 of the Development Project had not commenced. Tarn had submitted an application to amend the former City of Scarborough Employment Districts Zoning By-law No. 24982 (the “**Zoning By-law**”), as amended, in order to, among other things, permit the residential uses and increase the permitted heights and density otherwise permitted by the Zoning By-law on the site. The initial application was made in June 2015 and two resubmissions have been made since, each following review and comments from the City;

9. As set out in the First Report, a staff recommendation report was approved by the City council in mid-2017 and the Zoning By-law was being held pending the resolution by Tarn and Tarn Construction of outstanding engineering issues and Tarn entering into a Section 37 Agreement pursuant to the *Planning Act* (Ontario) with the City;

10. The Liquidator was advised by Bennett Jones that Tarn had hoped to have the outstanding engineering issues resolved and the Section 37 Agreement finalized in order to be added to the list for the City council meeting on October 2, 2017 (the “**City Meeting**”) to address the application for the amendment to the Zoning By-law and in order for Tarn to execute a Section 37 Agreement with the City;

11. As a result of timing of the Liquidator’s appointment and in order for the Liquidator to take the time necessary to understand and review the required information and documentation needed in order to make a well-informed decision with respect to the Development Project, the Liquidator requested that Bennett Jones advise the City that Tarn would not be seeking to be added to the list to attend the City Meeting;

12. The Liquidator has been advised that once a zoning by-law is amended, essentially no changes or amendments can be made to the zoning by-law for a period of two years. The Liquidator was of the view that it would be prudent to postpone any application for the Zoning By-law until a sale process had been commenced and the Liquidator had an opportunity to understand the interest in the Development Project;

Sale Process

13. On November 29, 2017, Justice McEwen granted the Sale Process Order (the “**Sale Process Order**”) pursuant to which, among other things, the Liquidator was authorized to retain Colliers Macaulay Nicolls Inc. (“**Colliers**”) to be the marketing and listing agent and is authorized to carry out the Sale Process attached as Schedule “A” to the Sale Process Order (the “**Sale Process**”) utilizing the services of Colliers to do so;

14. The Liquidator retained Colliers as the marketing and listing agent on November 29, 2017 and the Liquidator and Colliers commenced putting together materials to undertake the Sale Process;

15. On November 30, 2017, the Liquidator met with Colliers, Miller Thomson and Bennett Jones to discuss the sales and marketing strategy;

16. The Liquidator and Colliers are of the view that the Property would be the most marketable if it can be marketed with as many options as possible. These options include the ability to market the Property with the opportunity to vary components of the development approvals relating to the Property including changes to the current draft Zoning By-law and site plan;

Changes to the OMB and Timing to Launch Appeals

17. The Government of Ontario is currently debating legislation to replace the OMB with a proposed Local Planning Appeal Tribunal;

18. Based on the draft legislation posted as Bill 139 on the Legislative Assembly of Ontario's website as of December 1, 2017, the intent of the new legislation, among other things, is to change the nature of appeals for zoning applications and to limit the powers of the new Local Planning Appeal Tribunal as compared to the current rights to appeal to the OMB and the broad powers of the OMB on the hearing of appeals;

19. Neither the transition process to the new regime nor the full extent of the differences between the two regimes are fully known at this time as the legislation needs to be finalized and the regulations are not yet released;

The OMB Appeals

20. The Zoning Amendment Application was submitted to the City on June 3, 2015 and the Site Plan Application was submitted to the City on March 29, 2016;

21. The Zoning Amendment Application is intended to implement a recently approved Official Plan amendment for the Property by re-zoning to allow a mixed use development of the Property that will include new residential, retail, and office uses, a hotel and new public spaces;

22. The Site Plan Application is intended to allow a mixed used development of the Property that will include new residential, retail and offices uses, as well as a hotel and new public spaces;

23. Tarn is entitled to file the Zoning Amendment Appeal with the OMB pursuant to subsection 34(11) of the *Planning Act* (Ontario) and the Site Plan Appeal pursuant to subsection 114(15) of the *City of Toronto Act, 2006*;

24. Based on the legislation as it is currently proposed, and the uncertainty of the transition process to the new regime, the Liquidator's municipal counsel recommended that if marketing the Property with as many options as possible is desirable for the Sale Process then the OMB Appeals should be filed at the earliest possible opportunity given the imminent adoption of the new legislation and also because it will shorten the time within which a purchaser could have their desired development designs finally approved by starting the OMB appeal process for them;

25. By filing the OMB Appeals, the successful purchaser will have to obtain a hearing before the OMB to finalize the Zoning By-law and site plan. The Liquidator understands that, even if the successful purchaser intends to accept the draft Zoning By-law and site plan as currently drafted, they would still require a hearing before the OMB to essentially approve that settlement;

26. The filing of the OMB Appeals will allow the Liquidator to market the Property with various options available to potential purchasers, such as an option to amend an aspect of the Zoning By-law as currently proposed, to address changes to the Zoning By-law and to address changes the site plan in respect of the Property, through the existing OMB process;

27. In the Liquidator's view, given the imminent changes to the municipal law regime in Ontario, which the Liquidator has been advised by its municipal counsel, may limit an appellant's rights on appeal, the immediate filing of the OMB Appeals will provide flexibility within the Sale Process, which will enhance maximization of realizations from the Property, and is reasonable and appropriate in the circumstances;

28. The Winding Up Order including, without limitation, paragraph 2(i);

29. Rule 37 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended;

30. Part XVI of the OBCA; and

31. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

1. The Notices of Appeal, attached as Schedule "A" and "B" hereto;
2. The First Report of the Liquidator; and
3. Such further evidence as the lawyers may advise and this Honourable Court may permit.

December 3, 2017

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto Ontario M5H 3S1,

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Stephanie De Caria LSUC#: 68055L
Tel: 416.597.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as
Liquidator of Tarn Financial Corporation

TO: The Service List Attached hereto as Schedule "C"

SCHEDULE “A”



Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130
Toronto, Ontario, M5X 1A4 Canada
T: 416.863.1200
F: 416.863.1716

Andrew L. Jeanrie
Partner
Direct Line: 416.777.4814
e-mail: jeanriea@bennettjones.com
Our File No. 74461.1

December ●, 2017

VIA PERSONAL DELIVERY

City Clerk's Office
Toronto City Hall, 13th Floor, West Tower
100 Queen Street West,
Toronto, ON M5H 2N2

Attention: Ulli S. Watkiss, City Clerk

Dear Ms. Watkiss:

RE: 2035 Kennedy Road
Notice of Appeal pursuant to subsection 34(11) of the *Planning Act* (Ontario) with respect to the Application to Amend the Zoning By-law – Application No.: 15 167709 ESC 40 OZ (the "Application")

We are writing on behalf of Tarn Financial Corporation, in order to file an appeal of the Application as it relates to the property municipally known as 2035 Kennedy Road, Toronto (the "**Property**").

We are writing with respect to the Application, which was submitted to the City of Toronto (the "**City**") on June 3, 2015. No decision on the Application has been made up to date. Please accept this letter as the Notice of Appeal pursuant to subsection 34(11) of the *Planning Act* (Ontario) (the "**Act**").

The Application

The Application is intended to implement a recently approved Official Plan amendment for the property by re-zoning the property to allow a mixed use development of the Property that will include new residential, retail, and office uses, a Hotel and new public spaces.

The proposal is intended to be developed in multiple phases, including three residential apartment towers ranging from 31 to 40 storeys in height, retail uses, an existing hotel, some new hotel, and a 9 storey office and retail building.

Failure to Make a Decision

November 1, 2017

Page 2

In light of the failure by the City to make a decision on the Application within 120 days after the receipt of the Application, we are filing an appeal to the Ontario Municipal Board ("**OMB**") pursuant to subsection 34(11) of the Act.

Enclosed please find a completed OMB Appellant Form A1, a copy of the Notice of Complete Application, and a cheque for \$300.00 with respect to the fee prescribed by the *Ontario Municipal Board Act*.

Please contact the undersigned if you have any questions or require further information.

Yours truly,

BENNETT JONES LLP

Andrew L. Jeanrie

Encls.

cc: KPMG.





Environment and Land Tribunals Ontario
Ontario Municipal Board

655 Bay Street, Suite 1500
Toronto ON M5G 1E5

Telephone: 416-212-6349

Toll Free: 1-866-448-2248

Fax: 416-326-5370

Website: www.elto.gov.on.ca

Appellant Form (A1)

Instructions for preparing and submitting the Appellant Form (A1)

- **Important: Do not send your appeal directly to the Ontario Municipal Board (OMB).**
Submit your completed appeal form(s) and filing fee(s) by the filing deadline to either the Municipality or the Approval Authority/School Board, as applicable. The notice of decision provided by the municipality/approval authority will tell you where to send the form and appeal fee.
- The Municipality/Approval Authority/School Board will forward your appeal(s) and fee(s) to the OMB.
- We are committed to providing 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 at:
Toll free: 1-866-448-2248; or
TTY: 1-800-855-1155 via Bell relay
- E-mail is the primary form of communication used by the OMB. Providing an e-mail address ensures prompt delivery/receipt of documents and information. Please ensure to include your e-mail address in the space provided on the appeal form.
- A filing fee of \$300 is required for each type of appeal you are filing.
Example: An appeal of an official plan and a zoning by-law would be \$300 + \$300 for a total fee of \$600.
- To view the Fee Schedule, visit the OMB's website [<http://elto.gov.on.ca/omb/fee-chart/>].
- The filing fee **must** be paid by certified cheque or money order, in Canadian funds, payable to the **Minister of Finance**. Do not send cash.
- If you are represented by a solicitor the filing fee may be paid by a solicitor's general or trust account cheque.
- Professional representation is not required but please advise the OMB if you retain a representative after the submission of this form.
- The *Planning Act*, *Development Charges Act*, *Education Act* and *Ontario Municipal Board Act* are available on the OMB's website [<http://elto.gov.on.ca/omb/legislation-and-regulations/>].
- Fields marked with an asterisk (*) are mandatory.



Environment and Land Tribunals Ontario
Ontario Municipal Board
 655 Bay Street, Suite 1500
 Toronto ON M5G 1E5
 Telephone: 416-212-6349
 Toll Free: 1-866-448-2248
 Fax: 416-326-5370
 Website: www.elto.gov.on.ca

Appellant Form (A1)

Receipt Number (OMB Office Use Only)

Date Stamp - Appeal Received by Municipality

1. Appeal Type (Please check all applicable boxes) *

Subject of Appeal	Type of Appeal	Act Reference (Section)
Planning Act Matters		
Official Plan or Official Plan Amendment	☐ Appeal a decision by local council that adopted an OP or OPA (exempt from approval by Minister or Approval Authority)	17(24)
	☐ Appeal a decision of an Approval Authority that approved or did not approve all or part of a plan or amendment	17(36)
	☐ Approval Authority failed to make a decision on the plan within 180 days	17(40)
	☐ Council failed to adopt the requested amendment within 180 days	22(7)
	☐ Council refused the requested amendment	
Zoning By-law or Zoning By-law Amendment	☐ Appeal the passing of a Zoning By-law	34(19)
	☒ Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	☐ Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control Zoning By-law	☐ Appeal the passing of an Interim Control By-law	38(4)
Minor Variance	☐ Appeal a decision of the Committee of Adjustment that approved or refused the application	45(12)
Consent/Severance	☐ Appeal a decision that approved or refused the application	53(19)
	☐ Appeal conditions imposed	53(27)
	☐ Appeal changed conditions	53(14)
	☐ Application for consent – Approval Authority failed to make a decision on the application within 90 days	
Plan of Subdivision	☐ Application for a plan of subdivision – Approval Authority failed to make a decision on the plan within 180 days	51(34)
	☐ Appeal a decision of an Approval Authority that approved a plan of subdivision	51(39)
	☐ Appeal a decision of an Approval Authority that did not approve a plan of subdivision	
	☐ Appeal a lapsing provision imposed by an Approval Authority	
	☐ Appeal conditions imposed by an Approval Authority	
	☐ Appeal conditions - after expiry of 20 day appeal period but before final approval (only applicant or public body may appeal)	51(43)
	☐ Appeal changed conditions	51(48)

Subject of Appeal	Type of Appeal	Act Reference (Section)
Development Charges Act Matters		
Development Charge By-law	☐ Appeal a Development Charge By-law	14
	☐ Appeal an amendment to a Development Charge By-law	19(1)
Development Charge Complaint	☐ Appeal municipality's decision regarding a complaint	22(1)
	☐ Failed to make a decision on the complaint within 60 days	22(2)
Front-ending Agreement	☐ Objection to a front-ending agreement	47
	☐ Objection to an amendment to a front-ending agreement	50
Education Act Matters		
Education Development Charge By-law	☐ Appeal an Education Development Charge By-law	257.65
	☐ Appeal an amendment to an Education Development Charge By-law	257.74(1)
Education Development Charge Complaint	☐ Appeal approval authority's decision regarding a complaint	257.87(1)
	☐ Failed to make a decision on the complaint within 60 days	257.87(2)
Aggregate Resources Act Matters		
Aggregate Removal Licence	☐ One or more objections against an application for a 'Class A' aggregate removal licence	11(5)
	☐ One or more objections against an application for a 'Class B' aggregate removal licence	
	☐ Application for a 'Class A' licence – refused by Minister	11(11)
	☐ Application for a 'Class B' licence – refused by Minister	
	☐ Changes to conditions to a licence	13(6)
	☐ Amendment of site plans	16(8)
	☐ Minister proposes to transfer the licence – applicant does not have licensee's consent	18(5)
	☐ Minister proposes to refuse transfer of licence – applicant is licensee or has licensee's consent to transfer	
	☐ Minister proposes to refuse transfer of licence – applicant does not have licensee's consent to transfer	
	☐ Revocation of licence	20(4)
Municipal Act Matters		
Ward Boundary By-law	☐ Appeal the passing of a by-law to divide the municipality into wards	222(4)
	☐ Appeal the passing of a by-law to redivide the municipality into wards	
	☐ Appeal the passing of a by-law to dissolve the existing wards	
Ontario Heritage Act Matters		
Heritage Conservation District	☐ Appeal the passing of a by-law designating a heritage conservation study area	40.1(4)
	☐ Appeal the passing of a by-law designating a heritage conservation district	41(4)

Other Matters

Subject of Appeal	Act/Legislation Name	Section Number
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2. Location Information

Address and/or Legal Description of property subject to the appeal *
2035 Kennedy Road

Municipality *
Toronto

Upper Tier (Example: county, district, region)

3. Appellant/Objector Information

Note: You must notify the OMB of any change of address or telephone number in writing. Please quote your OMB Case/File Number(s) after they have been assigned.

Last Name

First Name

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation) *
Tarn Financial Corporation

Professional Title

Email Address

Daytime Telephone Number *
416-777-8487

ext.

Alternate Telephone Number

Fax Number

Mailing Address

Unit Number

Street Number *
2035

Street Name *
Kennedy Road

PO Box

City/Town *
Toronto

Province *
Ontario

Country *
Canada

Postal Code *
M1T 3G2

4. Representative Information

☒ I hereby authorize the named company and/or individual(s) to represent me

Last Name
Jeanrie

First Name
Andrew

Company Name
Bennett Jones LLP

Professional Title
Partner

Email Address
jeanriea@bennettjones.com

Daytime Telephone Number
416-777-4814

ext.

Alternate Telephone Number

Fax Number
416-863-1716

Mailing Address

Unit Number
3400

Street Number
100

Street Name
King Street West

PO Box
130

City/Town
Toronto

Province
Ontario

Country
Canada

Postal Code
M5X1A4

Note: If you are representing the appellant and are **not** a solicitor, please confirm that you have written authorization, as required by the OMB's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☐ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

5. Appeal Specific Information

Municipal Reference Number(s)

Application Nos: 15 167709 ESC 40 OZ

Outline the nature of your appeal and the reasons for your appeal *

Please see attached letter.

Oral/written submissions to council

Did you make your opinions regarding this matter known to council?

☐ Oral submissions at a public meeting ☐ Written submissions to council

Planning Act matters only

Applicable only to official plans/amendments, zoning by-laws/amendments and minor variances that came into effect/were passed on or after July 1, 2016 (Bill 73)

Is the 2-year no application restriction under section 22(2.2) or 34(10.0.0.2) or 45(1.4) applicable?

☐ Yes ☒ No

6. Related Matters

Are there other appeals not yet filed with the Municipality?

☐ Yes ☒ No

Are there other matters related to this appeal? (For example: A consent application connected to a variance application)

☐ Yes ☒ No

7. Scheduling Information

How many days do you estimate are needed for hearing this appeal?

☐ 1 day ☐ 2 days ☐ 3 days ☐ 4 days ☒ 1 week

☐ More than 1 week

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
3+

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.)
Planning, Architectural, traffic engineer, other technical witnesses as required.

Do you believe this matter would benefit from mediation?

(Prior to scheduling a matter for mediation, the OMB will conduct an assessment to determine its suitability for mediation)

☒ Yes ☐ No

8. Required Fee

Total Fee Submitted * \$ 300

Payment Method * ► ☐ Certified cheque ☐ Money Order ☒ Solicitor's general or trust account cheque

9. Declaration

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
		2017/12/01

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

SCHEDULE “B”



Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130
Toronto, Ontario, M5X 1A4 Canada
T: 416.863.1200
F: 416.863.1716

Andrew L. Jeanrie
Partner
Direct Line: 416.777.4814
e-mail: jeanriea@bennettjones.com
Our File No. 74461.1

December ●, 2017

VIA PERSONAL DELIVERY

Environment and Land Tribunals Ontario
Ontario Municipal Board
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Attention: Mary Ann Hunwicks, Registrar

Dear Ms. Hunwicks:

RE: 2035 Kennedy Road
Notice of Appeal pursuant to subsection 114(15) of the *City of Toronto Act, 2006*, with respect to the Application for Site Plan Approval – Application No.: 16 132832 ESC 40 SA (the "Application")

We are writing on behalf of Tarn Financial Corporation, in order to file an appeal of the Application as it relates to the property municipally known as 2035 Kennedy Road, Toronto (the "**Property**").

The Application was submitted to the City of Toronto (the "**City**") on March 29, 2016, and no decision on it has been made up to date. Please accept this letter as the Notice of Appeal pursuant to subsection 114(15) of the *City of Toronto Act, 2006* (the "**Act**").

The Application

The Application was submitted to allow a mixed used development of the Property that will include new residential, retail and offices uses, as well as a hotel and new public spaces. The Property is intended to be developed in multiple phases, including three residential apartment towers ranging from 31 to 40 storeys in height, retail uses, an existing hotel, some new hotel, and a 9 storey office and retail building.

Failure to Make a Decision

In light of the failure by the City to make a decision on the Application within 30 days after the submission of the Application, we are filing an appeal to the Ontario Municipal Board ("**OMB**") pursuant to subsection 114(15) of the Act.

December 2, 2017

Page 2

Enclosed please find:

1. Completed OMB Appellant Form A2;
2. Copy of the Application dated March 29, 2016;
3. Copy of the Site Plan Control Resubmission Form dated May 2, 2017;
4. Cheque for \$300.00 payable to the Minister of Finance with respect to the fee prescribed by the *Ontario Municipal Board Act*;
5. Copies of all plans and drawings, which are subject of this referral;
6. Copy of the City of Toronto Staff Final Report Re: 2035 Kennedy Road – Zoning Amendment Application dated May 26, 2017; and
7. Affidavit certifying that copies of all materials listed above have been sent to the City and that the City has been informed of the filing of this referral.

Please contact the undersigned if you have any questions or require further information.

Yours truly,

BENNETT JONES LLP

Andrew L. Jeanrie

Encls.

cc: KPMG





Environment and Land Tribunals Ontario
Ontario Municipal Board

655 Bay Street, Suite 1500
Toronto ON M5G 1E5

Telephone: 416-212-6349

Toll Free: 1-866-448-2248

Fax: 416-326-5370

Website: www.elto.gov.on.ca

OMB Appellant Form (A2)

Receipt Number (OMB Office Use Only)

Reference Number (OMB Office Use Only)

Date Stamp - Appeal Received by OMB

Instructions

- Submit your completed appeal form(s) with the checklist(s) and the required documents including the filing fee(s) to the Ontario Municipal Board (OMB) by the filing deadline at the address listed above.
- The checklist(s) of required supplementary documentation is included at the end of the form and **must** be submitted in the **order** listed in the checklist(s) with your appeal form and fee.
- We are committed to providing 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 at:
Toll free: 1-866-448-2248; or
TTY: 1-800-855-1155 via Bell relay
- E-mail is the primary form of communication used by the OMB. Providing an e-mail address ensures prompt delivery/receipt of documents and information. Please include your e-mail address in the space provided on the appeal form.
- A filing fee of \$300 is required for each type of appeal you are filing. Example: An appeal of a site plan **and** a demolition permit would be \$300 + \$300 for a total fee of \$600.
- To view the Fee Schedule, visit the OMB's website [<http://elto.gov.on.ca/omb/fee-chart/>].
- The filing fee **must** be paid by certified cheque or money order, in Canadian funds, payable to the **Minister of Finance**. Do not send cash.
- If you are represented by a solicitor the filing fee may be paid by a solicitor's general or trust account cheque.
- Professional representation is not required but please advise the OMB if you retain representation after the submission of this form.
- To assist in the timely processing of the appeal package, please prepare the package in the following manner:
 - Single-sided only.
 - No staples. Please keep the documents held together with a clip or elastic only.
 - No binding.
 - Letter size (8 ½ x 11") and legal size (8 ½ x 14") documents only.
- The *Planning Act*, *Municipal Act*, *Ontario Heritage Act* and the *Ontario Municipal Board Act* are available on the OMB's website [<http://elto.gov.on.ca/omb/legislation-and-regulations/>].
- Fields marked with an asterisk (*) are mandatory.

1. Appeal Type (Please check all applicable boxes) *

Subject of Appeal	Type of Appeal	Reference (Section)
Planning Act Matters		
Demolition Permits (Use O1 checklist)	☐ Application for a demolition permit – refused by the municipality	33(4)
	☐ Application for a demolition permit – council failed to make a decision within 30 days	
	☐ Appeal conditions imposed	33(10)
	☐ Application for relief from conditions – refused by the municipality	33(15)
	☐ Application for relief from conditions – municipality failed to make a decision within 30 days	
Zoning By-law Amendment: Holding Symbol (Use O2 checklist)	☐ Application to remove the 'Holding' symbol – failed to make a decision on the application within 120 days	36(3)
	☐ Application to remove the 'Holding' symbol – refused by the municipality	
Site Plan (Use O3 checklist)	☒ Application for a site plan – council failed to make a decision within 30 days	41(12)
	☐ Application for a site plan – appealing requirements imposed by the municipality/county or by the regional metropolitan/district municipality	
Municipal Act Matters		
Ward Boundary Petition (Use O4 checklist)	☐ Application to divide or redivide the municipality into wards or dissolve the existing wards – Council failed to pass a by-law within 90 days	223(4) of the <i>Municipal Act</i>
City of Toronto Act Matters		
Ward Boundary Petition (Use O4 checklist)	☐ Application to divide or redivide the municipality into wards or dissolve the existing wards – Council failed to pass a by-law within 90 days	129(4) of the <i>City of Toronto Act</i>
Ontario Heritage Act Matters		
Demolition or removal of a heritage designated structure (Use O5 checklist)	☐ Application for demolition or removal of a heritage structure – refused by council	34.1(1)
	☐ Appeal terms or conditions imposed	
Heritage Conservation District – alteration, erection, demolition or removal permit (Use O5 checklist)	☐ Application for alteration, erection, demolition or removal of a building or structure within a heritage conservation district – refused by council	42(6)
	☐ Appeal terms or conditions imposed	
Other Matters (Use O6 checklist)		
Subject of Appeal	Act/Legislation Name	Section Number

2. Location Information

Address and/or Legal Description of property subject to the appeal *
2035 Kennedy Road

Municipality *
Toronto

Upper Tier (Example: county, district, region)

3. Appellant Information

Note: You must notify the OMB of any change of address or telephone number in writing. Please quote your OMB Case/File Number(s) after they have been assigned.

Last Name

First Name

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation) *
Tarn Financial Corporation

Professional Title

Email Address

Daytime Telephone Number *

416-777-8487

ext.

Alternate Telephone Number

Fax Number

Mailing Address

Unit Number

Street Number *

2035

Street Name *

Kennedy Road

PO Box

City/Town *

Toronto

Province *

Ontario

Country *

Canada

Postal Code *

M1T 3G2

4. Representative Information

☒ I hereby authorize the named company and/or individual(s) to represent me

Last Name

Jeanrie

First Name

Andrew

Company Name
Bennett Jones LLP

Professional Title
Partner

Email Address
jeanriea@bennettjones.com

Daytime Telephone Number

416-777-4814

ext.

Alternate Telephone Number

Fax Number

416-863-1716

Mailing Address

Unit Number

3400

Street Number

100

Street Name

King Street West

PO Box

130

City/Town

Toronto

Province

Ontario

Country

Canada

Postal Code

M5X1A4

Note: If you are representing the appellant and are **not** a solicitor, please confirm that you have written authorization, as required by the OMB's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☐ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

5. Appeal Specific Information

Municipal File Number
Application No.: 16 132832 ESC 40 SA

Date application submitted to municipality (yyyy/mm/dd)
2016/03/29

Outline the nature of your appeal and the reasons for your appeal *

Appeal under subsection 114(15) of the City of Toronto Act, 2006 (subsection 41(12) of the Planning Act), due to failure by the City of Toronto (the "City") to make a decision on Application for Site Plan Approval (No. 16 132832 ESC 40 SA) within 30 days after submission of the plans/drawings to the City.

Please see attached letter.

Provide a brief note explaining the proposal and a description of the lands under appeal *

The subject property is a 6.9 acre site containing a 14 storey Delta Toronto East hotel and an adjoining conference centre. The proposal is for a mixed used development that will include new residential, retail and offices uses, as well as a hotel and new public spaces. The property is intended to be developed in multiple phases, including three residential apartment towers ranging from 31 to 40 storeys in height, retail uses, an existing hotel, some new hotel, and a 9 storey office and retail building.

Please see attached letter.

Has a public meeting been held by the municipality?

☐ Yes ☒ No

6. Related Matters

Are there other appeals not yet filed with the Municipality?

☒ Yes ☐ No

Are there other matters related to this appeal?

☒ Yes ☐ No ▼

If yes, please provide OMB Case/File Number(s) and/or Municipal File Number(s)
Application No.: 15 167709 ESC 40 OZ

7. Scheduling Information

How many days do you estimate are needed for hearing this appeal?

☐ 1 day ☐ 2 days ☐ 3 days ☐ 4 days ☒ 1 week
☐ More than 1 week

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
3+

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.)
Planning, architectural, traffic engineer, other technical witnesses as required

8. Required Fee

Total Fee Submitted * \$ 300

Payment Method * ► ☐ Certified cheque ☐ Money Order ☒ Solicitor's general or trust account cheque

9. Declaration

I solemnly declare that all of the statements and the information provided, as well as any supporting documents are true, correct and complete.

I confirm that I have included applicable checklist(s) with required documents in the order listed in the checklist(s).

Name of Appellant/Representative	Signature of Appellant/Representative	Date (yyyy/mm/dd)
Andrew Jeanrie		2017/12/02

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.



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Checklist (O3)

Site Plans

Planning Act

Required Documentation (Please check boxes below to indicate that the document is included)

Application

- ☒ A copy of the application for site plan approval.

Decision – if applicable

- ☐ If applicable, a copy of the decision of the approval authority.

Plan/Sketch

- ☒ A copy of any plans, drawings or agreements which are the subject of this referral.

Planning Report

- ☒ A copy of any planning report considered by Council.

Oral/Written Submissions

- ☐ All information and material that the municipal council or approval authority considered in making their decision and/or received in relation to the matter such as any written or oral submissions from the public relating to the planning matter. (These can be requested from the municipality) Examples:
Hard copies of any written submissions
Minutes containing oral submission records
Electronic/Video (Thumb drive)
Other

Affidavit

- ☒ An affidavit or sworn declaration, certifying that copies of all material listed above, as well as a copy of this appeal form and checklist, have been sent to the approval authority having jurisdiction to approve the site plan and that the approval authority has been informed of the filing of this referral.

Fee

- ☒ Board fee of \$300 made payable to the Minister of Finance. The appeal will not be processed without this fee.

SCHEDULE “C”

EMAIL SERVICE LIST
(as at Dec 3, 2017)

TO:	KPMG 333 Bay Street Suite 4600 Toronto, ON M5H 2S5 Anamika Gadia Tel: 416.777.3842 Email: agadia@kpmg.ca Janine M. Bardley Tel: 416.777.8487 Email: jmbradley@kpmg.ca Marcel Rethore Tel: 647.777.5319 Email: mrethore@kpmg.ca Fax: 416.777.3364 Liquidator of Tarn Financial Corporation.
AND TO:	MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1 Kyla E.M. Mahar Tel: 416.595.8516 Email: kmahar@millerthomson.com Fax: 416.595.8695 Stephanie De Caria Tel: 416.595.2652 Email: sdecaria@millerthomson.com Fax: 416.595.8695 Lawyers for the Liquidator.

AND TO:	GOWLING WLG (CANADA) LLP 1 First Canadian Place Suite 1600 100 King Street West Toronto ON, M5X 1G5 E. Patrick Shea Tel: 416.862.7525 Email: Patrick.shea@gowlingwlg.com Fax: 416.862.7661 Christopher Stanek Tel: 416.862.7525 Email: Christopher.stanek@gowlingwlg.com Fax: 416.862.7661 Lawyers for Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk and Kaan Holdings Inc.
AND TO:	PALLET VALO LLP 77 City Centre Drive, West Tower Suite 300 Mississauga, ON L5B 1M5 Bobby H. Sachdeva Tel: 905.273.3300 Email: bsachdeva@pallettvalo.com Fax: 905.273.6920 Lawyers for Ali Akman and SAMM Capital Holdings Inc.
AND TO:	MCCARTHY TETRAULT LLP Suite 5300 Toronto Dominion Bank Tower Toronto ON M5K 1E6 Geoff R. Hall Tel: 416.601.7856 Email: ghall@mccarthy.ca Fax: 416.868.0673 Adam Goldenberg Tel: 416.601.8357 Email: agoldenberg@mccarthy.ca Fax: 416.868.0673 Lawyers for the Appellate, Ali Akman and SAMM Capital Holdings Inc.

AND TO:	MERIDIAN CREDIT UNION 50 Ronson Drive, Unit 155 Toronto, ON M9W 1B3 Ryan Topple Tel: 416.438.9351 Email: ryan.topple@meridiancu.ca Fax: 416.438.3023 Zenon Iwachiw Tel: 416.438.9351 Email: zenon.iwachiw@meridiancu.ca Fax: 416.438.3023 Brian Mocha Tel: 905.988.4042 ext, 2435 Email: brian.mocha@meridiancu.ca Fax: 416.438.3023
AND TO:	SCARFONE HAWKINS LLP 1 James Street South, 14th Floor Hamilton, Ontario L8P 4R5 Michael Valente Tel: 905.523.1333 Email: mvalente@shlaw.ca Fax: 905.523.5878 Lawyers for Meridian Credit Union
AND TO:	KINGSETT CAPITAL INC. 66 Wellington Street West Suite 4400 Toronto, ON M5K 1H6 Daniel Pollack Tel: 416.639.6587 Email: dpollack@kingsettcapital.com Fax: 416.687.6701

AND TO:	LAX O’SULLIVAN LISUS GOTTLIEB LLP 145 King Street West Suite 2750 Toronto, ON M5H Matthew Gottlieb Tel: 416.598.1744 Email: mgottlieb@counsel-toronto.com Andrew Winton Tel: 416.644.5342 Email: awinton@counsel-toronto.com Fax: 416.598.3730 Lawyers for Kingsett Capital Inc.
AND TO:	GOLDMAN SLOAN NASH & HABER LLP 480 University Avenue Suite 1600 Toronto ON M5G 1V2 Leonard Finegold Tel: 416.597.3376 Email: finegold@gsnh.com Fax: 416.597.3370 Lawyers for MCW Consultants LTD
AND TO:	TORKIN MANES LLP 151 Yonge Street Suite 1500 Toronto, ON M5C 2W7 Ryan Hauk Tel: 416.643.8810 Email: rhauk@torkinmanes.com Fax: 1.844.275.6200 Lawyers for Roni Excavating Limited, GFL Infrastructure Group Inc. and Skygrid Construction Inc.

AND TO:	BAKER MCKENZIE 181 Bay St Toronto, ON M5J 2T3 Michael Nowina Tel: 416.863.1221 Email: michael.nowina@bakermckenzie.com Fax: 416.863.6275 Lawyers for Global Hospitality Licensing S.a.r.l.
AND TO:	LAW OFFICE OF LAURA FAIBISH 952 Old County Road Severna Park, Maryland 21146 G. Adam Graber Tel: 410.757.9230 Email: adam.graber@marriott-sp.com Laura Faibish Email: laura.faibish@marriott-sp.com Roz Winegrad Email: roz.winegrad@marriott.com Lawyers for Marriott International Inc.
AND TO:	TORYS LLP 79Wellington Street West Suite 3000 Toronto, ON M5K 1N2 Adam Slavens Tel: 416.865.7333 Fax: 416.865.7380 Email: aslavens@torys.com Lawyers for Tarion Warranty Corporation

AND TO:	CANADA REVENUE AGENCY c/o DEPARTMENT OF JUSTICE Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite 3400 Toronto ON M5X 1K6 Diane Winters Tel: 416.973.3172 Email: diane.winters@justice.gc.ca Fax: 416.973.0810 Lawyers for Canada Revenue Agency
AND TO:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5 Kevin O'Hara Tel: 905.433.6934 Email: kevin.ohara@ontario.ca Fax: 905.436.4510

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable December 6, 2017)**

MILLER THOMSON LLP
Scotia Plaza
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Toronto Ontario M5H 3S1

Kyla Mahar LSUC#: 44182G
Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSUC#: 68055L
Tel: 416.595.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as
Liquidator of Tarn Financial Corporation

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE	)	WEDNESDAY, THE 6 th DAY
	)	
JUSTICE MCEWEN	)	OF DECEMBER, 2017

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAH HOLDINGS INC.

Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION

Respondents

APPLICATION UNDER Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,
c. B.16.

**ORDER
(Re: Authorizing Liquidator to file OMB Appeals)**

THIS MOTION, made by KPMG Inc., in its capacity as court appointed liquidator (the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) effective on September 25, 2017, for an order authorizing the Liquidator to file Notice of Appeals with the Ontario Municipal Board (“**OMB**”) in respect of the real property owned by Tarn and municipally known as 2035 Kennedy Road, Toronto, Ontario (the

“Property”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion dated December 3, 2017 (the “**Notice of Motion**”), the draft Zoning Amendment Appeal (as defined in the Notice of Motion), the draft Site Plan Appeal (as defined in the Notice of Motion), and the First Report of the Liquidator dated November 13, 2017, and on hearing the submissions of counsel for the Liquidator, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of ● sworn December ●, 2017, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion is hereby dispensed with.
2. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to file a Notice of Appeal with the OMB pursuant to subsection 34(11) of the *Planning Act* (Ontario) from the Application to Amend the Zoning By-law submitted to the City of Toronto bearing Application No.: 15 167709 ESC 40 OZ in respect of the Property substantially in the form attached as Schedule “A” to the Notice of Motion.
3. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to file a Notice of Appeal with the OMB pursuant to subsection 114(15) of the *City of Toronto Act, 2006* from the Application for Site Plan Approval submitted to the City of Toronto bearing Application No.: 16 132832 ESC 40 SA in respect of the Property substantially in the form attached as Schedule “B” to the Notice of Motion.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

ORDER DATED DECEMBER 6, 2017
(Re: Authorizing Liquidator to file OMB Appeals)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto Ontario M5H 3S1

Kyla Mahar LSUC#: 44182G
Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSUC#: 68055L
Tel: 416.597.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as
Liquidator of Tarn Financial Corporation

Volkan Basegmez et al.
Applicants

Ali Akman et al.
and Respondents

Court File No.: CV-17-11697-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE DECEMBER 6, 2017)

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Lawyers for KPMG Inc., in its capacity as
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