

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 16, 2018

CASE NO(S): LC140037

PROCEEDING COMMENCED UNDER subsection 26(b) of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended

Claimant:	1739061 Ontario Inc.
Respondent:	Hamilton-Wentworth District School Board
Subject:	Land Compensation
Property Address/ Description:	1055 King Street East
Municipality:	Hamilton
OMB Case No.:	LC140037
OMB File No.:	LC140037
OMB Case Name:	1739061 Ontario Inc. v. Hamilton-Wentworth District School Board

PROCEEDING COMMENCED UNDER section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 33 of the Board's *Rules of Practice and Procedure*

Request by:	1739061 Ontario Inc.
Request for:	Request for Directions

Heard: February 15, 2018 by telephone conference call

APPEARANCES:

Parties

1739061 Ontario Inc.

Hamilton-Wentworth District School Board

Counsel

F. Sperduti

A. Lasani

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

[1] The is the decision resulting from a Pre-hearing Conference (“PHC”) held by Telephone Conference Call (“TCC”) regarding a claim by 1739061 Ontario Inc. (“Claimant”) against the Hamilton-Wentworth District School Board (“Respondent”) regarding the expropriation of lands at 1055 King Street East, Hamilton.

[2] Prior to the TCC the parties had provided a draft Procedural Order. The parties were requesting dates for a fifteen day hearing in November of 2018.

[3] During the TCC, the Board heard that examinations and discoveries had been completed and issues had been identified. Some responses to undertakings resulting from the discoveries had not been provided. The Board heard that the parties had an understanding of the witnesses that they would be calling, although there could be some changes to the number of witnesses that would be required. Also, the Board heard at the parties had been through mediation outside of the Board process.

[4] After hearing from the parties, the Board concluded that it would be appropriate to schedule the hearing. The Board scheduled the hearing to commence at **10 a.m. on Monday, February 11, 2019 at:**

**Stoney Creek Municipal Bldg.
Satfleet Room
Council Chambers
777 Hwy #8,
Stoney Creek ON**

[5] The hearing will continue until **Friday, March 1, 2019** which will provide fourteen hearing days because the Family Day holiday falls within this period. The Board understands that fourteen days should be sufficient hearing time for the appeal.

[6] The parties requested that a date be identified in the Procedural Order (“PO”) to hear any motions that arising from the examinations for discovery. The Board has set April 12, 2018 as the date for motions and this has been included in the PO. The Board also set March 30, 2018 as the date by which answers to undertakings must be provided and any re-examination resulting from the answers must be completed.

[7] Subsequent to the TCC, the Board received a finalized PO that has the consent of the parties.

[8] The Board adopts the PO which is attached to this decision.

[9] The Member is not seized but can be spoken to if necessary.

[10] No further notice is required.

“C. Conti”

C. CONTI
VICE-CHAIR

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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ATTACHMENT 1

O.M.B. File No.: LC140037

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF the *Expropriations Act*, R.S.O. 1990, c. E. 26, and
IN THE MATTER OF an arbitration

B E T W E E N:

1739061 ONTARIO INC.

Claimant

- and -

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

Respondent

On consent of the parties, the Board has issued the following Procedural Order

PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request of a party or as it sees fit. It may alter this Order by an oral ruling or by written Order.

ORGANIZATION OF THE HEARING

2. The hearing will commence on **Monday, February 11, 2019 at 10:00 AM at Stoney Creek Municipal Building, Sاتفleet Room, Council Chambers, 777 Hwy #8, Stoney Creek, Ontario L8E 5J4**. The length of time scheduled for the hearing is **fourteen (14) days** inclusive. No further notice will be issued. The hearing commencement date may be adjourned on consent of the parties.

ISSUES

3. The issues at the hearing shall be those set out in the pleadings, including such amendments, if any, as may be permitted by the Board. There will be no additional issues raised without the permission of the Board, and the party seeking such variance may be subject to an award of costs against it.

REQUIREMENTS BEFORE THE HEARING

4. The Board has set down the following dates for the effective case management of this matter:
 - (a) Answers to undertakings and any re-examination arising out of answers to undertakings, shall be completed by **March 30, 2018**, and
 - (b) Any motions arising from examinations for discovery are to be served on or before **April 12, 2018 at 10:00am at Dundas Municipal Service Centre, Auditorium / OMB Hearing Room, 60 Main Street, 2nd Floor, Dundas, Ontario L9H 1C6.**

WRITTEN EVIDENCE

5.
 - (a) “Written evidence” includes all written material, letters, reports, studies and documents which a party intends to present as evidence at the hearing. Written evidence shall have consecutively numbered pages and, where appropriate, consecutively numbered paragraphs.
 - (b) “Expert report” means a document prepared by an expert witness, consisting of an outline of his or her qualifications, an outline of the issues he or she will address in oral evidence, a description of the expert witness’ opinions on those issues, and a list of reports or studies that the expert witness will rely on at the hearing.

- (c) “Witness statement” means a document consisting of a short outline of the facts and issues that a lay witness will address in oral evidence.
6. A party who intends to call witnesses, whether by summons or not, shall provide to the Board and the other parties a list of the witnesses and their disciplines on or before **July 30, 2018**.
 7. All expert witnesses shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of the statement and supporting reports or documents must be provided as required in paragraph 19 below. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If neither of these requirements is complied with, the Board may refuse to hear the expert’s testimony.
 8. On or before **September 30, 2018**, all parties shall provide copies of their expert witness statements or reports to all other parties.
 9. Any party intending to call a lay person as a witness shall serve on all other parties and file with the Board a witness statement of the lay person on or before **September 30, 2018**.
 10. Any party may reply to an expert witness statement (or expert report) provided such reply is provided to all parties by no later than **November 29, 2018**.
 11. Further written evidence, witness statements and expert reports may be served and filed only with leave of the Board and, where leave is granted pursuant to Section 28(1) of the *Act*, shall be served and filed at least 10 calendar days before the date on expert witness who will give oral evidence is to be called.
 12. A party who has filed an expert witness statement must have that witness attend the hearing to give oral evidence unless the party notifies the parties and the Board at least **seven (7) days** before the hearing, that the written evidence is not part of the record.

AMENDMENT OF WRITTEN EVIDENCE

13. Amendments to expert reports or witness statements will be permitted only by motion, with notice to all parties, unless all parties agree to waive this requirement by a written consent.

ORDER OF EVIDENCE

14. (1) The order of presentation of evidence shall be:
 - (i) case for the Claimant;
 - (ii) case for the Respondent; and
 - (iii) reply by the Claimant.
15. Counsel shall use best efforts to ensure that the witness who will follow the witness who is testifying shall be available in the hearing room to take the stand immediately upon the completion of the testimony of the prior witness.

REQUEST TO ADMIT

16. Any party choosing to exercise its right to serve a request to admit facts or documents pursuant to Rule 51 of the *Rules of Civil Procedure* incorporated by reference in Board Rule 132 shall serve such request or requests on the party or parties opposite on or before **January 22, 2019**.

NOTICE OF READINESS FOR HEARING

17. The parties shall execute and file a Notice of Readiness for Hearing by **January 22, 2019**.
18. Documents may be delivered by personal delivery, email, facsimile, courier, registered or certified mail or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

19. The Ontario Municipal Board file number is to be clearly marked on all documents, visual, written or otherwise, to be filed with the Board.

This member is not seized of the matter.

So Orders the Board.

MEMBER

SUMMARY OF KEY DATES

<u>DATE</u>	<u>EVENT</u>
March 30, 2018	Answers to Undertakings to be delivered on or before
April 12, 2018	Motions arising from Examinations for discovery to be served on or before
July 30, 2018	Exchange of Witness Lists
September 30, 2018	Exchange of Expert Witness Statements / Reports / Lay Witness Statements
November 29, 2018	Exchange of Expert Witness Reply Statements / Reply Reports
January 22, 2019	Request to Admit
January 22, 2019	Notice of Readiness of Hearing
February 11, 2019	Hearing Stoney Creek Municipal Bldg. Satfleet Room Council Chambers 777 Hwy #8, Stoney Creek ON