

ISSUE DATE:

**Sept. 30, 2011**



PL050408

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Harbour West Neighbours Inc., Michael Poworoznyk, Shawn Selway and John Mattinson have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 23 to the (former) Regional Official Plan for the City of Hamilton  
Approval Authority File No. ROPA No. 23  
OMB File No. O050065

The TDL Group Corp., the Harbour West Neighbours Inc., the Canadian National Railway, 687224 Ontario Inc. et. al. have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 198 to the Official Plan for the City of Hamilton  
Approval Authority File No. OPA No. 198  
OMB File No. O050066

Rheem Canada Ltd., the Harbour West Neighbours Inc., the Canadian National Railway, 687224 Ontario Inc. et. al. have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 05-073 of the City of Hamilton  
OMB File No. R050077

**APPEARANCES:**

**Parties**

**Counsel/Agent\***

City of Hamilton

Brian Duxbury

Canadian National Railway

Alan Heisey

1255717 Ontario Ltd.

Anthony Powell

Harbour West Neighbours Inc.

Shawn Selway\*

**DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD**

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**Background**

The purpose of the pre hearing was to clarify the position of the residents and continue the submissions in connection with the motion originally launched by the

Harbour West Neighbours Inc. (known as the North End Neighbours (NEN)). Mr. Turkstra did not appear at the hearing, having advised the Board in August that he will not be representing NEN. Mr. Selway, a member of the Board of NEN, now acts as agent and confirmed that all correspondence should be sent to his attention. In addition, he has instructions to represent NEN at the Mediation, scheduled by the Board at the request of all parties, for early October 2011.

### **Disposition of Motion**

The Motion brought by NEN seeks two orders from the Board. The first requests production of documents and the second seeks appointment of experts to assist NEN at the hearing. NEN asks the Board to order the following:

- (a) Direct the City to provide to NEN and to the public all reports, data, expert opinion, staff recommendations and complete details of the new proposed uses for the Barton Tiffany area in order that NEN can convene a public meeting that will be sufficiently grounded in knowledge of the implications of the City's proposal so that residents can understand and assess the impacts of the City's proposals.
- (b) Direct the City to appoint an independent planner and an independent lawyer to review, in the style of an ombudsman's review, the City's position with a view to responding to the CNR appeal, in the manner the City had proposed by supporting the contents of Setting Sail Secondary Plan.

### **Production**

Dealing first with the request for production, the motion is dismissed for several reasons. First, the City has determined that the Setting Sail Secondary Plan (Secondary Plan) should be modified. This is a decision that is solely within the discretion of the City. It is the City's intention to prepare its evidence and proceed to the hearing proposing the Secondary Plan, as modified. While NEN may be disappointed that the City has chosen to modify the Secondary Plan, it is entirely within the City's purview to make that determination. Second, NEN, as a party to the hearing, will have

access to all of the City's evidence and reports in support of the modifications. Accordingly, there is no need to order additional production. Third, NEN can hold a public information session with its members at any time and provide any public information the City has prepared to support its modifications. There is no need for an order from the Board in this regard.

### Appointment of Experts

The second request from NEN is that the Board issue an order directing the City to appoint and fund planning and legal expertise to assist the residents. The motion is dismissed. The Board agrees with Mr. Duxbury's submissions. There is simply no support for the proposition that the Board can direct the City to fund an independent review of the City's case. There is nothing in the *Planning Act*, nor any other legislation, that would allow such an order to be made. As submitted by Mr. Heisey, the request amounts to one for "intervenor funding", a concept that is no longer supported by legislation.

### **Decision and Order**

1. The Motion is dismissed.
2. A Mediation is set for October 3, 2011.
3. A further pre-hearing will be held at 1:00 p.m. on Thursday, October 6, 2011. There shall be no further notice. Mr. Duxbury will advise all parties and Mr. Norris of the location. The purpose of the pre hearing will be to finalize the terms of the Procedural Order that will govern the organization and conduct of the hearing, including exchange dates for witness statements and a list of issues.
4. As previously determined, the hearing is scheduled to commence on December 5, 2011, at 10:00 a.m. in Hearing Room OMB # 6, McMaster Learning Centre, 50 Main St. E., Hamilton, Ontario. No further notice shall be given.

This is the Order of the Board.

“J. de P. Seaborn”

J. de P. SEABORN  
VICE-CHAIR