

ISSUE DATE:

Jan. 21, 2009



PL070386

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

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Hamilton Metal Trading Corporation and Aberdeen (Hamilton)
Holdings Inc. and Trinity Properties Investments Inc.
Subject: Proposed Official Plan Amendment No. 210
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: PL070386

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Hamilton Metal Trading Corporation and Aberdeen (Hamilton)
Holdings Inc.
Subject: Zoning By-law No. 07-043
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: R0070071

APPEARANCES:

Parties

Hamilton Metal Trading Corporation and
Aberdeen Hamilton Holdings Inc. and Trinity
Property Investments Inc.

City of Hamilton

Counsel

Joel Farber

Art Zuidema

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON
JANUARY 13, 2009 AND ORDER OF THE BOARD**

At this pre-hearing conference, the Board ordered on consent that the following interested participants' statements must be filed with the two Parties and the Board on or before Friday, September 11, 2009: the Main West Esplanade BIA, the Westdale BIA, the Kirkendall Neighbourhood Association and the Ainslie Wood/Westdale Community Association. Representatives for these bodies who appeared at this pre-

hearing conference agreed to the above-named date for the filing of their respective statements.

The Board sets aside six (6) weeks for the full hearing into these matters that will commence on Monday, October 5, 2009 at 10:30 a.m. in the City of Hamilton. The City will confirm for the Board the precise location of the full hearing.

Attached to this decision are the final Procedural Order and a consolidated issues list. No further notice will be given and the Member is not seized.

So orders the Board.

“R. Rossi”

R. ROSSI
MEMBER

ATTACHMENT "1"

PL070386

ONTARIO MUNICIPAL BOARD

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. c. P. 13, as amended

Appellant: Hamilton Metal Trading Corp and Aberdeen Holdings Inc.
Subject: Proposed Official Plan Amendment No. 210
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: O070052

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended

Appellant: Hamilton Metal Trading Corp and Aberdeen Holdings Inc.
Subject: By-law No. 07-043
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: R070071

PROCEDURAL ORDER

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

Organization of the Hearing

2. The hearing will begin on **October 5, 2009** at 10:30 a.m. at OMB Hearing Room #6, McMaster Learning Centre, 50 Main Street East, Hamilton, Ontario.
3. The length of the hearing will be about **six weeks**.
4. The parties and participants are listed in **Attachment 1** to this Order.
5. The Issues are set out in the Issues List attached as **Attachment 2**. There will be no changes to this list unless the Board permits or all the parties consent, and a party who asks for changes may have costs awarded against it.
6. Any person intending to participate in the hearing should provide a telephone number and address (and facsimile number and e-mail address, if any) to the Board as soon as possible (*preferably before the prehearing conference*.) Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.
7. Any person who wishes to become a party to the hearing, and who did not make a request for party status at the prehearing conference, must request the Board's permission to be added as a party to the hearing. The Board may refuse such request.

Requirements Before the Hearing

8. Expert planning and/or market witnesses may have a meeting on or before **August 28, 2009** to try to resolve or reduce the issues for the hearing.
9. 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. This list must be delivered on or before **July 24, 2009**.
10. An expert witness 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 this must be provided as in section [13]. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
11. A participant or party or other witness who is not a professional in the subject matter to be addressed must provide to the Board and the parties an outline of the evidence he/she will give at the hearing on or before **September 4, 2009** or he/she may not give oral evidence at the hearing.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section [13].
13. On or before **July 31, 2009** the parties shall provide two (2) copies of their witness and expert witness statements, reports or any other written evidence to the other parties.
14. On or before **September 4, 2009**, the parties shall provide a list of the order in which their witnesses will be called to the other parties.
15. On or before **September 11, 2009**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. Parties may provide to all other parties a written response to any written evidence on or before **September 11, 2009**. The failure of a party to provide a written response shall not be considered by the Board as being an agreement by that party to the written evidence of another party.
17. A person wishing to change written evidence, including witness statements, must make a written motion to the Board, unless the other parties consent to the change of written evidence (*see Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion*).
18. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board on or before **September 11, 2009** that the written evidence is not part of their record or all the parties agree that the written evidence is not part of the record.

19. Documents may be delivered by personal delivery, facsimile, email (as an email attachment) or 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 [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification. If witness statements and / or reports are delivered by email, the party / participant shall deliver a printed copy of same to the parties no later than the next business day.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.
21. The order of evidence shall be in accordance with **Attachment 3**.
22. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment 4**.

This Member is not seized. So orders the Board.

ATTACHMENT # 1	
PARTIES	
City of Hamilton	Art Zuidema Senior Solicitor City of Hamilton CIBC Tower, 12 th Floor 21 King Street West Hamilton, Ontario L8P 4W7
Hamilton Metal Trading Corp. Aberdeen (Hamilton) Holdings Inc. and Trinity Property Investments Inc.	Joel D. Farber Fogler, Rubinoff LLP Barristers and Solicitors 95 Wellington Street West, Suite 1200 Toronto, Ontario M5J 2Z9
The Gore District Land Trustee Corporation	Randall S. Bocock Evans, Philp Barristers and Solicitors Commerce Place, 16 th Floor One King Street West Hamilton, Ontario L8P 1A4
PARTICIPANTS	
Jeff Bush Director, Main West Esplanade BIA	459 Main Street West Hamilton, Ontario L8P 1K3 jbush76@cogeco.ca
Tony Greco Director, Lock Street BIA	230 ½ Locke Street South Hamilton, Ontario L8P 4B7
Adam Stewart President Kirkendall Neighbourhood Association	P.O. Box 25 180 James Street South Hamilton, Ontario L8P 4V1 aps127@msn.com
John Wigle and Vinnie Welsh President Ainslie Wood/Westdale Community Association of Resident Homeowners Inc.	221-1063 King Street West Hamilton, Ontario L8S 4S3 and to 42 Kipling Road Hamilton, Ontario L8S 3X3 vwelsh@cogeco.ca
David Simpson/Neil Hughes Westdale Village BIA	950 King Street West Hamilton, Ontario L8S 1K8 nhughes@westdalevillage.ca
Sean Burak	456 Herkimer Street Hamilton, Ontario L8P 2J3 seanb@relyon.ca
Keith Birch	702-24 Tisdale Street South Hamilton, Ontario L8N 2V9
Stephanie Hilson	26 Beulah Avenue Hamilton, Ontario L8P 4G9

ATTACHMENT #2

ISSUES LIST OF HAMILTON METAL TRADING CORP., ABERDEEN (HAMILTON) HOLDINGS INC. AND TRINITY PROPERTIES HOLDINGS INC.

Planning

1. Does the proposal conform with the Growth Plan for the Greater Golden Horseshoe in accordance with the *Places to Grow Act, 2005 S.O. c.13*?
2. Is the proposal consistent with the Provincial Policy Statement in accordance with the *Planning Act, R.S.O. c. P.13*?
3. Does the proposal conform with the (former) Region of Hamilton-Wentworth Official Plan?
4. Does the proposal conform to the applicable policies of the City of Hamilton Official Plan?
5. Does the proposal conform to the City of Hamilton's GRIDS Strategy (Growth Related Integrated Development Strategy) and what weight is to be ascribed to this Council approved policy?
6. Is there justification for the City's proposed uses and restrictions on commercial uses on the subject lands.
7. Is the down-zoning of the Appellant's land to exclude commercial permissions justifiable, and if so, to what extent?
8. Is the Trinity development proposal compatible with the McMaster Innovation Park and other existing and planned land uses within the Secondary Plan and neighbouring communities?

Engineering

9. Are water and sanitary services available to service the development?
10. What is the preferred method for storm water management?
11. Does the August 11, 2008 Functional Servicing Report, prepared for Trinity property address the servicing issues related to the proposed Trinity development?

Retail Market Demand

12. Is there a market demand for the retail and service commercial elements of the Trinity development proposal?
13. Does the market study justify the zoning by-law and the Secondary Plan amendments by Trinity?
14. Will the proposed development result in adverse planning impacts on the existing commercial structure?

Business Park Uses Market Demand

15. Is there a market demand for the land uses proposed on the subject land in OPA 210 and Zoning By-law 07-043?

Transportation

16. Based upon the preferred land use plan, what are the required transportation improvements required to serve the Secondary Plan area?
17. Does the Trinity Traffic Impact Study properly address all issues related to the proposed Trinity plan?
18. What transportation improvements are required to accommodate the Trinity preferred land use plan?
19. Does the proposed Trinity Development Plan comply with the recommendations of the Kirkendall Neighbourhood Transportation Master Plan and the Frid Street Environmental Assessment, and what weight is to be ascribed to these Council approved policies?
20. What improvements are required by the Ministry of Transportation to implement the proposed Trinity plan?

ATTACHMENT #3
ORDER OF EVIDENCE

Hamilton Metal Trading Corp., Aberdeen (Hamilton) Holdings Inc. and Trinity Property Investments Inc.

Gore District Land Trustee

City of Hamilton

Reply by Hamilton Metal Trading Corp., Aberdeen (Hamilton) Holdings Inc. and Trinity Property Investments Inc.

ATTACHMENT # 4

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties meet to discuss this sample Order before the prehearing conference to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an unincorporated group wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statements. NOTE that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. Visual evidence includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A witness statement is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An expert witness statement should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A participant statement is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

*The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:
direct examination by the party presenting the witness;
direct examination by any party of similar interest, in the manner determined by the Board;
cross-examination by parties of opposite interest;
re-examination by the party presenting the witness; or
another order of examination mutually agreed among the parties or directed by the Board.*