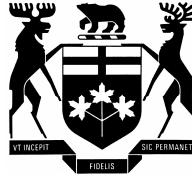


ISSUE DATE:

May 10, 2011



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL100691

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to announce a decision respecting the Proposed Amendment to the Official Plan for the City of Hamilton on lands composed of Part of Lot 57, Concession 2 in the City of Hamilton (Approval Authority File No. OPA-07-014)
OMB File No. PL100691

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting Part of Lot 57, Concession 2 from "AA-S1353" (Agricultural) District to a site specific "DE" (Low Density Multiple Dwellings) District, Modified and "E" (High Density Multiple Dwellings) District, Modified to implement the Official Plan Amendment
OMB File No. PL100692

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 57, Concession 2 in the City of Hamilton
(Approval Authority File No. 25T-200712)
OMB File No. PL100706

APPEARANCES:

Parties

Deanlee Management Inc.

City of Hamilton

Counsel

P. DeMelo

N. Smith

ALSO APPEARING:

Niagara Escarpment Commission

J. Thompson

Derek Schmuck

Roy Wolker

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON
FEBRUARY 22, 2011 AND ORDER OF THE BOARD**

Deanlee Management Inc. (the Applicant) proposed a development project in the City of Hamilton (the City). The project would involve changes to the City's Official Plan (OP), and its Zoning By-laws; the Applicant also proposed a Plan of Subdivision. It did not receive official City endorsement for any of the above, and it appealed on all counts to the Board.

At this Pre-hearing Conference, the Board heard of the arrangements for the timing of the hearing to address these matters, and the prospective Parties. The Board disposes of the above matters as follows:

1. The Board recognizes the following as Parties: the Niagara Escarpment Commission, Mr. Derek Schmuck, and Mr. Roy Wolker.
2. The Board acknowledges the prospective Participants listed at "Attachment 2" to the Procedural Order appended hereto as "Attachment A".
3. The hearing on the merits shall start on **Monday, June 6, 2011 at 10:00 A.M. at:**
Stoney Creek Municipal Building
Council Chambers
777 Highway 8
Stoney Creek, Ontario
4. The following days are scheduled for the hearing:

June 6, 7, 8, 13, 14, 15, 16
5. No further notice will be given for the matters currently before the Board.
6. The Board's Procedural Order is appended as "Attachment A".
7. This Member is not seized.

It is so Ordered.

“M. C. Denhez”

M. C. DENHEZ
MEMBER

Attachment "A"

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 June 6th, 2011. The hearing will be held at:

Stoney Creek Municipal Building
Council Chambers
777 Highway 8
Stoney Creek, Ontario
3. The hearing is scheduled for June 6, 7, 8, 13, 14, 15 and 16.
4. The Parties, Participants and Observers identified at the pre-hearing conference (*see Attachment 1 for the meaning of Parties and Participants*) are listed in Attachment 2 to this Order and the order of evidence is listed in Attachment 3 to this Order.

Requirements Before the Hearing

5. The Parties shall advise each other, by no later than May 6th, 2011 of the issues which it no longer wishes to proceed with. Remaining issues will then be the subject matter of the hearing.
6. A Party who intends to call witnesses, whether by summons or not, shall provide to the Parties and the Town Clerk, a list of their witnesses by May 6th, 2011.
7. Expert witnesses in the same field may have a meeting before the hearing to try to resolve or reduce issues for the hearing. The experts may prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the Parties and the Town Clerk.
8. Only a Party may call or lead professional (expert) evidence and only a Party may cross-examine witnesses called by others. A Participant may lead lay evidence and make submissions. A Party may be subject to an award of costs but a Participant is not subject to costs.

9. All expert witnesses shall prepare a Witness Statement which shall among other things, list any reports prepared by the expert or any other reports or documents to be relied on at the hearing. Attachment 1 provides further details on the requirements of Witness Statements. 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.
10. On or before May 16th, 2011 the Parties shall provide copies of their Witness Statements to the other Parties, Participants and to the City Clerk.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file a Witness Statement; but the Party calling them must file a brief outline of the expert's evidence on or before May 16, 2011.
12. A Participant listed in Attachment 2 must provide to the Parties, Participants and City Clerk, a Participant Statement on or before May 27th, 2011 or the Participant may not give evidence at the hearing.
13. Any Party or Participant may reply to a Witness Statement or Participant Statement provided such reply is provided to all Parties, Participants and the Town Clerk on or before May 27th, 2011.
14. The Parties shall make copies of their visual evidence available to all of the other Parties on or before May 27th, 2011. If a model or other large-scale exhibits will be used, all parties must have a reasonable opportunity to view it before the hearing.
15. A Party or Participant wishing to change written evidence, including witness statements, must make a written motion to the Board.

(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.)

16. A Party who has filed a Witness Statement (or report) must have the witness attend the hearing to give oral evidence, unless the Party notifies the Board at least seven (7) days before the hearing that the written evidence is not part of their record.
17. Documents may be delivered by personal delivery, facsimile, e-mail, registered or certified mail, or otherwise as the Board may direct. Hard copies of documents must be provided to the Clerk of the Municipality. The delivery of documents by fax shall be governed by the Board's Rules 26 to

31 on this subject. Material delivered by mail shall be deemed to have been received five (5) business days after the date mailed.

18. No adjournments or delays will be granted before or during the hearing except in accordance with the Board's Rules 61 to 65.

The Member is not seized.
So orders the Board.

ATTACHMENT 1 TO DRAFT 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 pre-hearing 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 party's comments about the contents of the Order at the conference.*

Pre-hearing 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 the evidence of all parties. 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 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 authorization 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 pre-hearing conference, must ask the Board's permission for this.*

***Participant** is an individual, group or corporation who may chose to 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. A Participant may not call expert witnesses or cross-examine the expert witnesses called by others. The Board will set the time for hearing these statements. **NOTE** that such person will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs (nor can costs be awarded against them), 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 public participant intends to present as evidence at the hearing.*

***Witness Statements:** A **witness statement** should include their (1) name and address, (2) qualifications, (3) a list of the issues they will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports which 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 an summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 41 and 42 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness's 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.

ATTACHMENT 2: LIST OF PARTIES & PARTICIPANTS

PARTIES AND ORDER OF EVIDENCE

**Deanlee Management Inc.
City of Hamilton
Niagara Escarpment Commission
Derek Schmuck
Roy Wolker**

PARTICIPANTS

**M. J. Morgan
Kim Brosseau
Jim Stewart
Colleen Jewell
Andrew Knowles
Bruce Whitelaw
Barry Colbert
Joe Cherian
Chris McGillivray
Earn Cranfield**

ATTACHMENT 3: ORDER OF EVIDENCE

**Deanlee Management Inc.
City of Hamilton
Niagara Escarpment Commission
Derek Schmuck
Roy Wolker**

Reply Evidence – Deanlee Management Inc.

ATTACHMENT 4: LIST OF ISSUES

Intensity of Development

1. Is the site an appropriate location for the intensity of development proposed? Is the proposed development appropriate in light of the applicable intensification policies and directions of the City of Hamilton Official Plan and the Urban Hamilton Official Plan?
2. Is the proposed development compatible with the surrounding neighbourhood and is it in conformity with Policies A2.1.1, A.2.1.6, A2.1.13, A2.1.14, C7.2, and C7.3 of the Official Plan?
3. Is the proposed development in conformity with the policies of the Chedmac Secondary Plan, and in particular with Policies A6.1.1.iii), A6.1.2.i).b) and A6.1.2.i).c) which require new development to be sensitive to surrounding existing development?
4. Does the maximum number of dwelling units proposed in the OPA exceed the maximum densities allocated for Areas A and B?
5. Do the applications for an Official Plan Amendment, zoning bylaw and draft plan of subdivision conform with the Purpose of the Niagara Escarpment Plan, specifically to allow only such development as is compatible with the natural environment?

Cultural Heritage

6. Is the project consistent with Policy 2.6 of the Provincial Policy Statement?
7. Does the proposed development protect the cultural heritage landscape and identified built heritage features, in conformity with Section C.6 of the Official Plan?
8. Does the proposed development protect the cultural heritage landscape and identified built heritage features, in conformity with Section C.6 of the Official Plan and the PPS? What additional policies and tools are appropriate to ensure that new development is sympathetic to both the historical significance of the Chedoke Browlands and to the heritage architecture and cultural landscape features that will be preserved?
9. Do the applications for an Official Plan Amendment, zoning bylaw and draft plan of subdivision conform with the objectives of the Niagara Escarpment Plan, specifically Objectives 1, 4, 5 and 6 with respect to protecting unique ecological and historic areas, to ensure that development is compatible with the natural environment, to provide for adequate public access to the Niagara Escarpment?

Natural Heritage

10. Has adequate consideration been given to the identification and protection of significant trees?
11. Do the applications for an Official Plan Amendment, zoning bylaw and draft plan of subdivision conform with the Urban Area designation, Development Objectives (Part 1.7) of the Niagara Escarpment Plan to minimize impacts and the further encroachment of urban growth on the Escarpment environment?
12. Does the proposed development adequately minimize the impact and encroachment of urban growth on the Niagara Escarpment environment in conformity with Section A2.9.1.iii) of the Official Plan?
13. Are additional site development approaches, policies and regulations appropriate to ensure that the visual impacts of the project are satisfactorily mitigated?

Urban Design

14. Are there alternative site development and design approaches that would conform to the objectives and policies of the Official Plan and ensure compatibility with the surrounding neighbourhood?
15. What additional policies and tools are appropriate to ensure that new development is sympathetic to both the historical significance of the Chedoke Browlands and to the heritage architecture and cultural landscape features that will be preserved?
16. Do the applications for an Official Plan Amendment, zoning bylaw and draft plan of subdivision conform with the Urban Area designation, Development Objectives (Part 1.7) of the Niagara Escarpment Plan to ensure that all development is of an urban design compatible with the visual and natural environment of the Escarpment, including but not limited to the provision of a Visual Impact Assessment addressing:
 - a. Building height
 - b. Building locations, mass, spacing and setbacks
 - c. Architectural design details to minimize visual impacts
 - d. Views and viewsheds to and through the subject site
17. Do the applications for an Official Plan Amendment, zoning bylaw and draft plan of subdivision conform with the Development Criteria of the Niagara Escarpment Plan, in particular 2.2.1, 2.2.4, 2.2.5, 2.2.6, 2.2.8, 2.5, 2.7, and 2.12?
18. Have the visual impacts of the proposed development been adequately evaluated and if not what further evaluation is required? Should further visual evaluation be a draft approval condition? At what stage of the process should the further evaluation be

provided? Who should review it, who should approve it and how should the recommendations be implemented?

19. To what extent does the proposed development respect the Visual Impact Assessment (VIA) and addenda by Sitrine Research and can the recommendations of the VIA be effectively implemented by the proposed Official Plan amendment and zoning by-laws for the proposed development?
20. What draft approval conditions are proposed for the proposed plan of subdivision and are they appropriate?

Stormwater Management

21. What stormwater management facilities are proposed?
22. Should the draft plan of subdivision be revised to create a separate block for the flood and erosion hazard limits associated with Chedoke Creek?

Sustainability

23. Do the planning documents adequately support the realization of sustainable site development, including LEED and LID standards?

Prematurity

24. Is the proposed rezoning premature pending completion of additional supporting studies that will serve to confirm the feasibility and nature of site development, including a stormwater management plan, visual impact assessment, cultural heritage impact assessment, tree preservation plan, and a geotechnical study relating to construction impacts on the escarpment?
25. What are the appropriate conditions of draft plan approval?