

ISSUE DATE:

OCTOBER 23, 2013



PL130456

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

Monterey Heights Development Corporation has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 591-611 Garner Road West to facilitate the proposed development of residential apartment units and townhouse blocks within the High Density Residential land use designation (Approval Authority File No. OPA-12-013)
OMB File No. PL130456

Monterey Heights Development Corporation 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 neglect to enact a proposed amendment to Zoning By-law 08-060 of the City of Hamilton to rezone lands respecting 591-611 Garner Road West from "H-RM6-570" and "C5-261" to "H-RM6-570" with further site specific modifications to facilitate the proposed development of residential apartment units and townhouse blocks
OMB File No. PL130457

APPEARANCES:

Parties

Counsel

Monterey Heights Development Corporation

Steven Zakem

City of Hamilton

M. Minkowski and L Magi

MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON ON OCTOBER 7, 2013 AND ORDER OF THE BOARD

[1] This is a prehearing in the matter of an appeal by Monterey Heights Development Corporation ("Appellant") from the failure of the Council for the City of Hamilton to enact an Official Plan Amendment ("OPA") to the City's Official Plan for a property known municipally as 591 and 611 Garner Road West. The purpose of the proposed OPA is to permit the development of a residential apartment unit and townhouse block within the High Density Residential land use designation.

[2] The Appellant has also appealed the failure of the Council for the City of Hamilton to enact a Zoning By-law Amendment ("ZBA") to By-law 08-060 of the City of Hamilton ("City") to rezone lands respecting 591-611 Gardner Road West from "H-RM6-570 and C5-261" to "H-RM6-570" with further site plan modifications to facilitate the development of a 4.5 storey apartment building comprising of 60 units and 84 standard townhouse dwelling units.

[3] Counsel for the municipality at the commencement of the prehearing advised the Board that on consent the City is requesting three things from the Board at this hearing namely:

1. A one-day hearing date to bring a motion regarding the legal status of the new Urban Hamilton Official Plan ("UHOP"), as it may apply to the Appellant appeals.
2. A second prehearing dated after the motion hearing to determine and to scope the outstanding issues.
3. A five-day hearing date in the new year to consider the matters under appeal based upon the determinations of the Board resulting from the motion being brought.

[4] Counsel for the municipality advised the Board that in a decision dated August 16, 2013, the Board approved in part the new UHOP and in the same decision the Board deleted sections of the previous in force and effect official plans.

[5] The Municipality by way of motion is seeking a determination of the Board as to the legal effect of its August 16, 2013 decision to approved UHOP as it might affect the matters under appeal.

[6] Counsel for the Appellant confirms that they are prepared to deal with the City's motion but wished to secure a hearing date, in the new year, to consider their appeals as they might apply after the determination of the motion to be brought by the municipality.

[7] The parties in response to questions from the Board agreed that any further prehearing to consider issues could form part of the motion hearing. The City contends

that a determination of the legal status of UHOP as it may apply to these appeals is fundamental and should be first and takes no issue with a new hearing in the new year or a further prehearing to scope the issues.

[8] The Board after considering the submissions of Counsel gave the following directions and orders.

ORDER

[9] The Board set a one-day motion hearing for **Monday, December 9, 2013 at 10 a.m.**

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OMB Courtroom #6
50 Main Street E.
Hamilton ON L8N 3V9**

[10] The motion material and response to motion are to be filed in accordance with the Board's *Rules of Practice and Procedure*.

[11] The Board further directs that the parties file in Word format their motion material with the Case Coordinator prior to the hearing and one hard copy of the motion material shall be filed at the commencement of the hearing.

[12] The parties at this motion hearing may also make submissions to the Board on the need for and the time of a prehearing.

[13] The Board sets a five-day hearing to consider the appeals for **Monday, April 28, 2014 at 10 a.m.**

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[14] Counsel for the municipality is directed to confirm the venue for both hearings with the Board's office.

[15] This five-day hearing is set without prejudice to any matters that might be determined resulting from the motion hearing.

[16] No further notice is required.

[17] The member is not seized but shall remain available subject to the Board calendar

“J. P. Atcheson”

J. P. ATCHESON
MEMBER