

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 26, 2015

CASE NO(S): PL131390

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1176792 Ontario Ltd
Appellant: Moore Sovereign Consistory
Appellant: Glenn Hamilton
Subject: Proposed Official Plan Amendment No. 11
Municipality: City of Hamilton
OMB Case No.: PL131390
OMB File No.: PL131390
OMB Case Name: Hamilton v. Hamilton (City)

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
City of Hamilton	M. Minkowski*
Moore Sovereign Consistory	A. Toumanians*
1176792 Ontario Ltd.	A. Berlingieri*
Glenn Hamilton	Self-represented

AMENDING DECISION DELIVERED BY M. CARTER-WHITNEY AND ORDER OF THE BOARD

[1] In accordance with Rule 108 of the Board's *Rules of Practice and Procedure*, whereby the Board may at any time and without prior notice to the parties correct a technical or typographical error made in a decision or order, the Memorandum of Oral Decision and Order ("decision") issued on May 8, 2015, is hereby amended as follows:

- The final sentence of paragraph [6] is deleted and replaced with the following:

“The two attached procedural orders, in respect of the 1176792 Ontario Ltd. appeal (Attachment 1) and of Mr. Hamilton’s appeal (Attachment 2), are adopted by the Board subject to the issues lists being finalized at or before the next PHC.”

[2] In all other respects the Board’s decision remains the same.

“M. Carter-Whitney”

M. CARTER-WHITNEY
MEMBER

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

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

PL131390

Ontario Municipal Board

PROCEEDING COMMENCED UNDER subsection 17(24) of the Planning Act, R.S.O. 1990, c.P.13, as amended

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Appellant: Glenn Hamilton
Appellant: Moore Sovereign Consistory
Subject: Proposed Official Plan Amendment No. 11
(Strathcona Secondary Plan)
Municipality: City of Hamilton
OMB Case No.: PL131390
OMB File No.: PL131390

PROCEDURAL ORDER

[1] The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order. This procedural order applies to the hearing of the appeal of the Strathcona Secondary Plan by 1176792 Ontario Ltd.

Organization of the Hearing

[2] The hearing will begin on **April 11, 2016 at 10:00 am** at Dundas Municipal Centre, Auditorium (2nd Floor), 60 Main St., Dundas, ON L9H 1C6.

[3] The length of the hearing will be **7 days**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.

[4] A further prehearing conference will begin on **October 15, 2015 at 10:00 am** at Dundas Municipal Centre, Auditorium (2nd Floor), 60 Main St., Dundas, ON L9H 1C6.

[5] The parties and participants identified at the prehearing conference are: City of Hamilton and 1176792 Ontario Ltd.

[6] The Issues are to be agreed upon by the parties, and submitted to the Board, failing which they will be determined by the Board at the prehearing conference of October 15, 2015. There will be no changes to this list unless the Board permits it. A party who asks for changes may have costs awarded against it.

[7] The order of evidence shall be in accordance with **Attachment #1**.

Requirements Before the Hearing

[8] All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.

[9] A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the municipal Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **January 24, 2016**. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.

[10] If any party intends to challenge the qualifications of an expert witness and object to the expert witness testifying at the hearing they shall do so by way of the service and filing of a notice of motion by **February 5, 2016** returnable on **February 29, 2016**. Any responding materials to such a motion shall be filed by **February 12, 2016**.

[11] 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 [10]. 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. An expert witness statement shall include an Acknowledgement of Expert's Duty form signed by the expert witness and the date of signature shall be a date prior to the date of signature or preparation of the expert witness statement.

[12] A witness must provide to the Board, the parties and to the Clerk of the City of Hamilton a witness statement, on or before **March 4, 2016** or the witness may not give oral evidence at the hearing.

[13] A participant must provide to the Board, the parties and to the Clerk of the City of Hamilton a witness or participant statement, on or before **March 4, 2016** or the participant may not give oral evidence at the hearing.

[14] 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 [10].

[15] On or before **March 24, 2016** 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 and file with the Clerk a written response to any written evidence on or before **March 24, 2016**.

[17] A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules [34 to 38].

[18] A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least 7 days before the hearing that the written evidence is not part of their record.

[19] Documents may be delivered by personal delivery, electronically by email, facsimile 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.

[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 purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment #2**.

This Member is not seized.

No further notice to be provided.

So orders the Board.

ATTACHMENT #1
ORDER OF EVIDENCE

1. City of Hamilton
2. 1176792 Ontario Ltd.
3. City of Hamilton Reply

ATTACHMENT #2

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process 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, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

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 will become the party and assume the responsibilities of a party as set out in the Procedural 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.

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. At the hearing, a participant may be asked questions by the parties about their statements. Participants do not normally receive notice of a mediation or conference calls on procedural issues and cannot ask for costs, or review of a decision as parties can.

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. If a model forms part of the evidence, photographs of the model shall also be filed.

Witness Statements:

A **witness statement** or 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 he or she will discuss and the witness' or participant's position on those issues; and a list of reports that the witness or participant will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise, (3) a list of the issues to be addressed, (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.

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

Summons: A party may ask 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.) An affidavit may be requested 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.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may 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 the material and do not attend.

ATTACHMENT 2

PL131390

Ontario Municipal Board

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[1] The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order. This procedural order applies to the hearing of the appeal of the Strathcona Secondary Plan by Glenn Hamilton.

Organization of the Hearing

[2] The hearing will begin on **April 20, 2016 at 10:00 am** at Dundas Municipal Centre, Auditorium (2nd Floor), 60 Main St., Dundas, ON L9H 1C6.

[3] The length of the hearing will be **3 days**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.

[4] A further prehearing conference will begin on **October 15, 2015 at 10:00 am** at Dundas Municipal Centre, Auditorium (2nd Floor), 60 Main St., Dundas, ON L9H 1C6.

[5] The parties and participants identified at the prehearing conference are: City of Hamilton and Glenn Hamilton.

[6] The Issues are to be agreed upon by the parties and submitted to the Board, failing which they will be determined by the Board at the prehearing conference of October 15, 2015. There will be no changes to this list unless the Board permits it. A party who asks for changes may have costs awarded against it.

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[10] If any party intends to challenge the qualifications of an expert witness and object to the expert witness testifying at the hearing they shall do so by way of the service and filing of a notice of motion by **February 5, 2016** returnable on **February 29, 2016**. Any responding materials to such a motion shall be filed by **February 12, 2016**.

[11] 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 [10]. 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. An expert witness statement shall include an Acknowledgement of Expert's Duty form signed by the expert witness and the date of signature shall be a date prior to the date of signature or preparation of the expert witness statement.

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[21] The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment #2**.

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