

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 28, 2015

CASE NO(S): PL140938

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

Appellant: Garth Trails Limited
Appellant: Gabriel Gasbarrini
Subject: Proposed Official Plan Amendment No. 24
Municipality: City of Hamilton
OMB Case No.: PL140938
OMB File No.: PL140938
OMB Case Name: Garth Trails Limited v. Hamilton (City)

Heard: July 6, 2015 in Dundas, Ontario

APPEARANCES:

Parties

Counsel*/Representatives

Garth Trails Limited

B. Duxbury*

Gabriel Gasbarrini

Self-represented

City of Hamilton

M. Kovacevic*

MEMORANDUM OF ORAL DECISION DELIVERED BY K.J. HUSSEY ON JULY 6, 2015 AND ORDER OF THE BOARD

[1] This pre-hearing conference (“PHC”) was convened at the request of the City of Hamilton (“City”) and Gabriel Gasbarrini, who sought the Board’s assistance in resolving their disagreement on the issues list that was submitted in the draft Procedural Order.

[2] At the start of the proceeding, Counsel for Garth Trails Limited told the Board his client took no position on this disagreement and with the Board's consent, he withdrew from the PHC.

[3] After much discussion, the City and Mr. Gasbarrini agreed to amending the wording of the existing issues and also to adding the following:

Would a Low Density Residential 3 designation in UHOPA No. 24 for the Property be consistent with the PPS 2014, conform to the Growth Plan and conform to UHOP.

[4] In all other respects the Procedural Order, which is appended hereto, remains the same and will govern the hearing of these appeals.

[5] This is the Order of the Board.

"K.J. Hussey"

K.J. HUSSEY
VICE-CHAIR

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

Ontario Municipal Board

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ONTARIO MUNICIPAL BOARD

PROCEDURAL ORDER

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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. This Procedural Order applies to the hearing of the appeal of proposed Official Plan Amendment No. 24 by Gabriel Gasbarrini.

Organization of the Hearing

2. The hearing will begin on **October 7, 2015** at 10:00 a.m. in the Dundas Town Hall, OMB Room (Auditorium), 60 Main Street East, Dundas, Ontario L9H 2P8.

3. The length of the hearing will be 3 days.

4. The parties and participants identified at the prehearing conference are listed in **Attachment #1** to this Order.

5. The Issues are attached as **Attachment #2**. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. The order of evidence shall be in accordance with **Attachment #3**.

Requirements Before the Hearing

7. 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 **July 30, 2015**.

8. 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 9. 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

9. A witness must provide to the Board, the parties and the Municipal Clerk a witness statement **by September 15, 2015**, or the witness may not give oral evidence at the hearing.

10. 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, by **September 15, 2015**, of the expert's evidence, as in section 8.

11. On or before **September 29, 2015** 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.

12. Parties may provide to all other parties and file with the Municipal Clerk a written response to any written evidence by **September 29, 2015**.

13. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.
(see Rules 34 to 38, inclusive, 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.)

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

15. Documents may be delivered by personal delivery, 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.

16. 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.

17. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order at set out in **Attachment #4**.

This Member is [not] seized.

So orders the Board.

ATTACHMENT #1

PARTIES

Gabriel Gasbarrini

City of Hamilton

ATTACHMENT #2

ISSUES

1. Should the designation in UHOPA No. 24 for the property known municipally as 121 Fiddlers Green Road ("Property") be Low Density Residential 1 or Low Density Residential 3?
2. Is the Low Density Residential 1 designation in UHOPA No. 24 for the Property consistent with the Provincial Policy Statement 2014, conform to the Growth Plan and conform to the Urban Hamilton Official Plan?
3. Would a Low Density Residential 3 designation in UHOPA No. 24 for the Property be consistent with the PPS 2014, conform to the Growth Plan and conform to UHOP.

ATTACHMENT #3
ORDER OF EVIDENCE

1. City of Hamilton
2. Gabriel Gasbarrini
3. City of Hamilton - Reply

ATTACHMENT #4

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 statement. **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.