

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



**ISSUE DATE:** October 14, 2015

**CASE NO(S):** PL150405

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Hamilton Health Science Corporation  
Subject: Failure of the City of Hamilton to announce a decision respecting Proposed Official Plan Amendment No. OPA-14-017

Municipality: City of Hamilton  
OMB Case No.: PL150405  
OMB File No.: PL150405  
OMB Case Name: Hamilton Health Science Corporation v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Hamilton Health Science Corporation  
Subject: Application amend Zoning By-law No. 6593 - Refusal of Application by the City of Hamilton

Existing Zoning: DE-2-'H'/S-1569 (Multiple Dwellings – Holding) District

Proposed Zoning: Site Specific  
Purpose: To permit an expansion of the parking lot  
Property Address/Description: 201 Robert St & 166 Ferguson Ave N  
Municipality: City of Hamilton  
Municipality File No.: ZAR-14-035  
OMB Case No.: PL150405  
OMB File No.: PL150406

**Heard:** September 23, 2015 in Hamilton, Ontario

**APPEARANCES:****Parties****Counsel**

City of Hamilton ("City")

J. Wice

Hamilton Health Science Corporation  
("HHSC")

S. Snider

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON  
SEPTEMBER 23, 2015 AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1] HHSC had applied to the City for a site specific Official Plan Amendment ("OPA") and a site specific Zoning By-law Amendment ("ZBA") to expand an existing parking lot onto 201 Robert Street and 166 Ferguson Avenue North ("Subject Lands").

[2] As the matters had not been dealt with within the statutory time requirements, HHSC appealed both matters to the Board.

[3] The matter came before the Board as a prehearing.

[4] Counsel for the respective parties had had discussions with regard to the likely hearing length and jointly recommended a five day hearing with a Procedural Order and issues list.

**DECISION**

[5] The Board set a five day hearing commencing on **Tuesday, February 16, 2016, at 11 a.m.** to be completed on **Monday, February 22, 2016** (or before), **will be held at:**

**Room 203  
Hamilton Convention Centre  
1 Summers Lane  
Hamilton, ON L8P 4Y2**

[6] The Procedural Order is attached.

[7] For the hearing, the Board, on consent of the parties, granted participant status to the following nine: J. Coleman, M. Borrelli, J. Neary, M. Thompson, the North End Neighbours Inc. c/o R. Fiedler, B. Simone on behalf of Beasley Neighbourhood Association, P. Copcutt on behalf of Central Neighbourhood Association, H. Veri, and E. Moreno.

[8] No further notice is required for the hearing.

[9] I am not seized.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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**ONTARIO MUNICIPAL BOARD**

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended

Applicant and Appellant:	Hamilton Health Science Corporation
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Applicant and Appellant:	Hamilton Health Science Corporation
Subject:	Application to amend Zoning By-law No. 6593 – Neglect of application by the City of Hamilton
Existing Zoning:	DE-2-‘H’/S-1569 (Multiple Dwellings – Holding) District
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Property Address/Description:	201 Robert St & 166 Ferguson Ave N
Municipality:	City of Hamilton
Municipality File No.:	ZAR-14-035
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**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 **February 16, 2016 at 11:00 a.m.** at the **Hamilton Convention Centre, Room 203, 1 Summers Lane, Hamilton, Ontario L8P 4Y2**. All parties and participants shall attend the first day of the hearing.

3. The length of the hearing will be **five (5)** days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties and participants identified at the prehearing conference 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 it. A party who asks for changes may have costs awarded against it.
6. The Witnesses are set out in the Witness List attached as Attachment 3. 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.

### **Requirements Before the Hearing**

7. 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.
8. Expert witnesses in the same field shall have a meeting before the hearing to try to resolve or reduce the issues for the hearing. The experts must 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 municipal Clerk.
9. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and 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.
10. A witness and expert witness must provide to the Board and the parties a witness statement on or before **December 21, 2015**, or the witness or expert witness may not give oral evidence at the hearing.
11. A participant must provide to the Board and the parties a participant statement on or before **December 21, 2015**, or the participant 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 and his or her area of expertise, as in section 10.

13. On or before **December 21, 2015**, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
14. Parties may provide to all other parties a written response to any written evidence on or before **January 25, 2016**.
15. 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].
16. 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.
17. Documents may be delivered in person, by courier, by email, by facsimile or registered or certified mail or otherwise as the Board may direct. The delivery of documents by fax and email 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.
18. 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.

This Member is not seized.

So orders the Board.

## ATTACHMENT 1

### Parties and Participants

<b>Appellant/Party</b>	<b>Counsel/Agent</b>	<b>Contact Information</b>
1. The City of Hamilton	Joanna Wice	<a href="mailto:joanna.wice@hamilton.ca">joanna.wice@hamilton.ca</a>  City of Hamilton Legal Services Division 21 King Street West, 12 <sup>th</sup> Floor Hamilton, ON. L8P 4W7  Tel: 905-546-4520 Fax: 905-546-4370
2. Hamilton Health Sciences Corporation	Scott Snider Anna Toumanians	<a href="mailto:ssnider@tmalaw.ca">ssnider@tmalaw.ca</a> <a href="mailto:atoumanians@tmalaw.ca">atoumanians@tmalaw.ca</a>  Turkstra Mazza Associates 15 Bold Street Hamilton, ON. L8P 1T3  Tel: 905-529-3476 Fax: 905-529-3663
<b>Participant</b>	<b>Counsel/Agent</b>	<b>Contact Information</b>
3. J.B Coleman	J.B Coleman	136 Cannon Street East Hamilton, ON. L8L 2A5
4. Michael Borrelli	Michael Borrelli	549 John Street North Hamilton, ON. L8L 4R9
5. J. D. Neary	J. D. Neary	115 Mary Street Hamilton, ON. L8R 1K4
6. Matthew Thompson	Matthew Thompson	55 Elgin Street Hamilton, ON. L8R 1K7
7. North End Neighbours Inc.	Rob Fiedler	78 Simcoe Street East Hamilton, ON. L8L 3N4
8. Beasley Neighbourhood Association	Bill Simone	145 Wilson Avenue Hamilton, ON. L8R 1E4
9. Central Neighbourhood Association	Paul Copcutt	231 Bay Street North Hamilton, ON. L8R 2R1
10. Victor Veri	Victor Veri	971 Hwy 6 North Hamilton, ON. L8N 2Z7
11. Edgardo Moreno	Edgardo Moreno	140 Cathcart Street Hamilton, ON. L8L 5A2

## ATTACHMENT 2

### Issues List

1. Is it good planning to amend the in-force Official Plan for the subject lands to allow for the addition of surface parking for the Hamilton General Hospital as a permitted land use?
2. Does the subject proposal for amendments to the City's Official Plan and Zoning By-law to permit the development of the properties for surface parking lots have appropriate regard to the matters of provincial interest set forth in Section 2 of the Planning Act, is the Subject Proposal consistent with the Provincial Policy Statement (2014) pursuant to Section 3 of the Planning Act, and does the Subject Proposal conform with the Growth Plan for the Greater Golden Horseshoe given the location and context of the subject lands?
3. Does the proposed amendment comply with and maintain the intent of all of the relevant and applicable in-force policies of the City of Hamilton Official Plan and the West Harbour Secondary Plan of the City of Hamilton that are not being amended, including, any criteria to be met regarding site specific Official Plan Amendments? Should the proposed Official Plan Amendment ensure that the proposed surface parking use is interim or temporary in nature and if so, how?
4. Recognizing that the lands will be subject to site plan control, has the proposed development taken into consideration appropriate urban design measures applicable to the project and/or planning area and how are these urban design measures to be implemented?
5. Does the subject proposal provide for a transitional land use given the context and future planning direction for the surrounding neighbourhood?
6. Is the proposed surface parking use an appropriate transitional/interim use of land? Should this transitional/interim use ensure that the proposed transitional/interim use (surface parking lot) does not frustrate or unreasonably delay the redevelopment of the subject lands for other permitted uses as approved by the City of Hamilton in its various planning documents and if so, how?
7. Are there other more appropriate mechanisms to allow for this transitional/interim use of lands while allowing for future approved planning objectives, policies and directions to be realized?
8. Are the proposed zoning modifications including, but not limited to, the restriction of the parking for hospital employees, amended parking space sizes and minimum landscape buffers, adequate and acceptable? Should the by-law ensure the proposed use is transitional/interim and if so, how?



## ATTACHMENT 3

### Witness List

#### **On Behalf of The City of Hamilton\***

##### **Witness**

1. Ted Davidson Land Use Planner

*\*The City reserves the right to call an Economist*

#### **On Behalf of Hamilton Health Sciences Corporation\***

##### **Witness**

2. Ed Fothergill Land Use Planner  
Fothergill Planning & Development
3. Mark Conway Economist  
N. Barry Lyon Consultants Limited
4. To be determined HHSC Board Member  
Hamilton Health Sciences Corporation

## **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](http://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.*