

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



**ISSUE DATE:** September 8, 2016

**CASE NO(S):** PL160066

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

Appellant: Greg Lawson  
Appellant: Justin Lewis  
Appellant: Peggy Lewis  
Appellant: D. Scott Munro; and others  
Subject: Proposed Official Plan Amendment No. 43  
Municipality: City of Hamilton  
OMB Case No.: PL160066  
OMB File No.: PL160066  
OMB Case Name: Lawson v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Greg Lawson  
Appellant: Justin Lewis  
Appellant: Peggy Lewis  
Appellant: D. Scott Munro; and others  
Subject: By-law No. 15-298  
Municipality: City of Hamilton  
OMB Case No.: PL160066  
OMB File No.: PL160067

**Heard:** August 15, 2016 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

D. Scott Munro

**Counsel\*/Representative**

M. Connell\*

Greg Lawson	M. Connell*
Justin Lewis	Self-represented
Art Samson	Self-represented
Peggy Lewis	Self-represented
Centurion (Dundas) Holdings Limited	S. Snider*, A. Toumanians*
City of Hamilton	S. Snider*, A. Toumanians*

### **MEMORANDUM OF ORAL DECISION DELIVERED BY M. CARTER-WHITNEY AND ORDER OF THE BOARD**

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[1] This is the first prehearing conference (“PHC”) concerning numerous appeals of City of Hamilton (“City”) Official Plan Amendment No. 43 and Zoning By-law No. 15-298, with respect to a proposed nine storey residential development at 71 Main Street and 10 Baldwin Street in the former Town of Dundas.

[2] On consent of the parties, the Board granted participant status to Jeanne Norris, a resident of Dundas. The Board explained the obligations of a participant to provide a written participant statement by the date set out in the Procedural Order, once finalized, and to be in attendance on the first day of the hearing to determine when she would be scheduled to testify.

[3] Scott Snider, counsel for both the City and Centurion (Dundas) Holdings Limited (“Applicant”), requested that the Board set dates for the hearing. He advised that his office had made efforts to contact the appellants in April and June of 2016 to determine the scope of the hearing and the number of witnesses anticipated. He received a response from Michael Connell, counsel for D. Scott Munro and Greg Lawson, but did not receive responses from the other appellants. Mr. Connell indicated that his clients intend to call one land use planning witness. Mr. Snider anticipates calling two planners, one on behalf of the City and the other on behalf of the Applicant.

[4] Justin Lewis advised that he had not yet been able to retain any expert witnesses, nor had he been able to access the Board's Rules and other information about Board process on its website. Mr. Lewis stated that he expects to call up to five witnesses to address issues relating to air quality, noise and groundwater, in addition to planning. Art Samson and Peggy Lewis said they intend to provide evidence themselves and will not call other witnesses.

[5] Although the issues have not yet been finalized, Mr. Snider and Mr. Connell gave an indication of the general land use planning issues in these appeals, including issues with respect to building height and parking. Mr. Snider and Mr. Connell agreed that the planning issues to be addressed in the hearing would not require more than five days. Mr. Snider questioned Mr. Lewis's intention to address air quality, noise and groundwater issues, noting that the development is proposed for a mixed use urban area and that the City did not require the Applicant to file reports addressing these issues during the application process. Mr. Snider proposed that Mr. Lewis be required to identify his proposed witnesses by the third week of September and provide their expert reports by the end of October. Mr. Snider asked that a second PHC be scheduled, subsequent to the submission of these expert reports, to address whether or not these are substantive and genuine issues.

[6] The Board will schedule a second PHC, at which the issues for the hearing will be finalized. The Board directed Mr. Lewis to identify his proposed witnesses to the other parties by Friday, September 23, 2016 and to provide their expert reports by Monday, October 31, 2016. The Board further directed Mr. Lewis to familiarize himself with the Board Rules of Practice and Procedure.

[7] Noting that Mr. Snider made numerous efforts to determine the issues and number of witnesses prior to the first PHC, the Board determined that it is fair and appropriate to set dates for the hearing in 2017. The Board is satisfied that the planning issues are sufficiently known to estimate that five days is a reasonable length for the hearing. Mr. Snider acknowledged that, if there are substantive air quality, noise and

groundwater issues to be heard, additional hearing days may be required, which could delay the commencement of the hearing.

[8] Mr. Snider undertook to confirm the venue for the second PHC and the hearing and to provide the other parties with a revised draft Procedural Order by Friday, August 19, 2016, which will include the dates discussed at the first PHC to provide witness lists, hold an experts' meeting and provide expert reports and witness and participant statements. The other parties undertook to respond to Mr. Snider by Friday, August 26, 2016 with any questions or concerns about the revised draft Procedural Order. The Board urged the parties and participant to use email to serve documents given the impending potential Canada Post labour disruption. Subsequent to the first PHC, Mr. Snider provided the revised draft Procedural Order, which is attached to this Order as Attachment 1.

[9] Mr. Snider consented to Art Samson and Peggy Lewis representing themselves and also providing evidence, as long as they do not seek to be qualified as experts. None of the other parties had any objections.

[10] The second PHC is scheduled to commence at **10 a.m. on Wednesday, November 30, 2016 at:**

**Dundas Town Hall  
2<sup>nd</sup> Floor Auditorium, OMB Room  
60 Main Street, Dundas  
Hamilton ON L9H 1C6**

[11] The hearing is scheduled to commence at **10 a.m. on Monday, April 3, 2017** and continue for **five days at:**

**Dundas Town Hall  
2<sup>nd</sup> Floor Auditorium, OMB Room  
60 Main Street, Dundas  
Hamilton ON L9H 1C6**

[12] No further notice will be given.

[13] The Member is not seized but will continue with case management of this matter subject to the requirements of the Board's calendar.

[14] Board Rule 107 states:

**107. Effective Date of Board Decision** A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

[15] Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

*"M. Carter-Whitney"*

M. CARTER-WHITNEY  
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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Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## ATTACHMENT 1 (To Decision)

**ONTARIO MUNICIPAL BOARD**

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

Appellant:	Greg Lawson
Appellant:	Justin Lewis
Appellant:	Peggy Lewis
Appellant:	D. Scott Munro; and others
Subject:	Proposed Official Plan Amendment No. 43
Municipality:	City of Hamilton
OMB Case No.:	PL160066
OMB File No.:	PL160066
OMB Case Name:	Lawson v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Greg Lawson
Appellant:	Justin Lewis
Appellant:	Peggy Lewis
Appellant:	D. Scott Munro; and others
Subject:	By-law No. 15-298
Municipality:	City of Hamilton
OMB Case No.:	PL160066
OMB File No.:	PL160067

**PROCEDURAL ORDER**

The Board orders that:

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.

**Organization of the Hearing**

2. A further prehearing conference will take place on **November 30, 2016 at 10:00 a.m.** at the Dundas Town Hall, 2<sup>nd</sup> Floor Auditorium, 60 Main Street, Dundas Ontario, L9H 1C6. No further notice shall be required.
3. The hearing will begin on **April 3, 2017 at 10:00 a.m.** at the Dundas Town Hall, 2<sup>nd</sup> Floor Auditorium, 60 Main Street, Dundas Ontario, L9H 1C6. No further notice shall be required.
4. 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.

5. The parties and participants (see Attachment 1 for the meaning of these terms) identified at the prehearing conference are listed in Attachment 2 to this Order.
6. The order of evidence is listed in Attachment 3 to this Order. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

### 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. A party who intends to call witnesses, whether by summons or not, shall provide to the Board and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **September 23, 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.
9. Issues lists shall be provided to the Board and the other parties on or before **September 23, 2016**. 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.
10. Expert witnesses in the same field shall have a meeting on or before **February 1, 2017** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts (if any) and the remaining issues to be addressed at the hearing, and provide this list to all of the parties on or before **February 6, 2017**.
11. An expert witness called by Justin Lewis to provide evidence in any field other than Land Use Planning, shall prepare an expert witness statement which 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 on or before **October 31, 2016**. 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.
12. An expert witness shall prepare an expert witness statement which 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 on or before **February 16, 2017**. 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.

13. A witness or participant must provide to the Board and the parties a witness or participant statement on or before **February 16, 2017** date, or the witness or 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 and his or her area of expertise on or before **February 16, 2017**.
15. On or before **February 16, 2017**, parties shall provide copies of their witness and expert witness statements to the other parties.
16. On or before **March 27, 2017**, 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.
17. Parties may provide to all other parties a written response to any written evidence on or before **March 20, 2017**.
18. 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].
19. 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 on or before **March 27, 2017** that the written evidence is not part of their record.
20. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, email or otherwise as the Board may direct. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
21. 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**

### ***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.elfo.gov.on.ca](http://www.elfo.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**

**LIST OF PARTIES AND PARTICIPANTS**

**PARTIES**

**1. City of Hamilton**

Scott Snider  
Anna Toumanians  
Turkstra Mazza Associates  
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**2. Centurion (Dundas) Holdings Limited**

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**3. Greg Lawson and Scott Munro**

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**5. Peggy Lewis**

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**6. Art Samson**

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***PARTICIPANTS***

**7. Jeanne Norris**

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**ATTACHMENT 3**

***ORDER OF EVIDENCE***

1. Non opinion overview by the City of Hamilton/Centurion (Dundas) Holdings Limited
2. Greg Lawson and Scott Munro
3. Justin Lewis
4. Peggy Lewis
5. Art Samson
6. Jeanne Norris
7. City of Hamilton/Centurion (Dundas) Holdings Limited
8. Reply