

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 15, 2017

CASE NO(S): PL161240

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Sonoma Homes Inc.
Subject: Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment

Existing Designation: Medium Density Residential 2C
Proposed Designated: High Density Residential
Purpose: To permit the proposed 12-storey residential building on lands

Property Address/Description: 1117 Garner Rd East
Municipality: City of Hamilton
Approval Authority File No.: UHOPA-16-010
OMB Case No.: PL161240
OMB File No.: PL161240
OMB Case Name: Sonoma Homes Inc. 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: Sonoma Homes Inc.
Subject: Application to amend Zoning By-law No. 87-57 - Neglect of the City of Hamilton to make a decision H-RM6-658 Zone

Existing Zoning: H-RM6-658 Zone
Proposed Zoning: Site specific to permit the proposed development
Purpose: To permit the proposed 12-storey residential building on lands

Property Address/Description: 1117 Garner Rd East
Municipality: City of Hamilton
Municipality File No.: ZAR-16-026
OMB Case No.: PL161240
OMB File No.: PL161241

Heard: November 1, 2017 in Hamilton (Dundas), Ontario

APPEARANCES:**Parties**

1804482 Ontario Limited
(Sonoma Homes Inc.)

City of Hamilton

Rosehaven Homes Limited and
Ancaster-Rose Homes Inc.

Counsel

D. Baker
(observed by student S. Baker)

P. MacDonald

G. Petch
(for counsel of record R. Cheeseman)

Participants

Donato Cascioli

Edward Hansen

Lazo Pejic

**MEMORANDUM OF ORAL DECISION DELIVERED BY S. TOUSAW ON NOVEMBER
1, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This Pre-hearing Conference (“PHC”) was held to organize a hearing on the merits of appeals by Sonoma Homes Inc. (the “Applicant”) which is seeking approval for a 12-storey residential building at 1117 Garner Road East in Ancaster (the “subject property”), within the City of Hamilton (the “City”).

[2] Applications for Official Plan Amendment and Zoning By-law Amendment were filed with the City and later appealed to this Board for failure of the City to make a decision within the statutory timeframes. The Applicant proposes to develop a 12-storey building containing 92 apartment units (87 two-bedroom units and five one-bedroom units), with necessary parking spaces (approximately half of the spaces underground).

[3] Today's date is "take your kids to work day" and the Board welcomed Sophia Baker, daughter of counsel for the Applicant. The Board confirms that Ms. Baker (student) sat at the counsel table and observed attentively throughout the proceedings.

PROCEEDINGS

[4] Mr. Petch requested party status for Rosehaven Homes Limited and Ancaster-Rose Homes Inc. These companies own and are developing lands abutting the subject property. On consent, the Board approved the request for party status.

[5] Three members of the public requested and were granted participant status with consent of the parties. Donato Cascioli owns two rental properties near the subject property and is contemplating future development on his land. Edward Hansen resides across the road from the subject property and has concerns with the proposal, including building height and traffic. Lazo Pejic resides across the road from the subject property and may wish to make a statement to the Board but did not express concerns at the PHC.

[6] Ms. Baker advised the Board of a threatening message left on her firm's phone system related to these appeals. Ms. Baker may make a written request to the Case Coordinator for security at the hearing, and Mr. MacDonald offered that the City would provide security if required. The Board advised all present that, while not suggesting that any person present made such call, illegal and inappropriate behaviour will not be tolerated.

[7] Ms. Baker advised that a draft procedural order, including an issues list, has been agreed to by the parties, including Mr. Cheeseman, and the procedural order will be finalized once the date of the hearing is established, and a copy will be forwarded to the Board. The parties are working to remove at least one issue from the list related to infrastructure, and the Board encouraged continued discussions to reduce or scope the issues for the hearing. The parties requested five days for the hearing on the merits.

[8] The Board requested a joint document book be prepared for the hearing to the extent possible. Ms. Baker agreed but the City was reluctant for logistical reasons. At the very least, the Board expects a joint document book for policy documents and studies, and requests best efforts to also include witness statements and related materials. Ms. Baker will insert this direction in the procedural order.

ORDER

[9] With consent of the parties, the procedural order submitted by Ms. Baker is Attachment 1 to this decision. The Board may be spoken to should issues arise with the procedural order.

[10] The hearing will commence at **10 a.m. on Monday, June 18, 2018** at:

**Dundas Town Hall
2nd Floor Auditorium
60 Main Street, Dundas
Hamilton, ON L9H 1C6**

[11] No further notice will be given.

[12] This Board Member is not seized.

"S. Tousaw"

S. TOUSAW
MEMBER

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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Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario**

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Subject: Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
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Subject: Application to amend Zoning By-law No. 87-57 - Neglect of the City of Hamilton to make a decision
Existing Zone: H-RM6-658 Zone
Proposed Zone: Site specific to permit the proposed development
Purpose: To permit the proposed 12-storey residential building
Property Address/Description: 1117 Garner Rd E
Municipality: City of Hamilton
Approval Authority File No.: ZAR-16-026
OMB Case No.: PL161240
OMB File No.: PL161241

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.

Organization of the Hearing

[2] The hearing will begin on **June 18, 2018** at 10:00a.m. at Dundas Town Hall, OMB Hearing Room, 60 Main Street, Hamilton, ON L9H 1C6.

[3] The length of the hearing will be **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 order of evidence shall be as set out 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, 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 **April 4, 2018**. For expert witnesses, a party is to include a copy of the curriculum vitae, acknowledgement of experts duty and the area of expertise in which the witness is proposed to be qualified.

[9] Expert witnesses in the same field shall have a meeting **on or before April 19, 2018** 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 and the municipal Clerk of the City of Hamilton **on or before April 24, 2018**.

[10] 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 [13]. 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.

[11] Non-expert witnesses and participants must provide to the Board and the parties a witness/participant statement **on or before May 4, 2018**, or the witness or 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 [13].

[13] **On or before May 4, 2018**, the parties shall provide copies of their expert witness statements to the other parties and to the Clerk of the City of Hamilton.

[14] **On or before June 8, 2018**, 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.

[15] Parties may provide to all other parties and to the Clerk of the City of Hamilton a written response to any written evidence **on or before May 29, 2018**.

[16] 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].

[17] 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.

[18] **On or before June 4, 2018**, the Parties will finalize the Joint Document Book by providing counsel for Sonoma Homes Inc. with a list of materials they wish to have included in the Joint Document Book. The Joint Document Book will contain the relevant Provincial and Municipal policies, applicable zoning by-law extracts, staff reports, guidelines and witness statements to be relied upon at the Hearing. Sonoma Homes Inc. will prepare the Joint Document Book for delivery to the Parties **on or before June 8, 2018**. All costs associated with the preparation and delivery of the Joint Document Book will be split equally among the Parties, with payment to be made upon receipt of invoice. The City of Hamilton's share of such costs shall be subject to the City's counsel receiving approval for such expenditures, if necessary. Amendments to the Joint Document Book may be made on consent or with permission of the Board.

[19] 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.

[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.

This Member is [not] seized.

So orders the Board.

SUMMARY OF KEY DATES

DATE	EVENT
April 4, 2018	Exchange of witness lists (names, disciplines and order to be called)
April 19, 2018	Experts meeting prior to this date
April 24, 2018	Circulation of Agreed Statement of Facts, if any
May 4, 2018	Exchange of Witness Statements, Summoned Witness Outlines, Expert Reports and Participant Statements
May 29, 2018	Exchange of Reply Witness Statements
June 4, 2018	Finalize Joint Document Book
June 8, 2018	Delivery of Joint Document Book
June 8, 2018	Exchange of Visual Evidence
June 18, 2018	Hearing commences

Attachment 1- Parties and Participants

PARTIES

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Attachment 2- Issues List

1. Does the subject proposal conform to the planning and urban design policies of the Urban Hamilton Official Plan?
2. Does the subject proposal conform to the planning and urban design policies of the Meadowlands Neighbourhood IV Secondary Plan?
3. Is the scale, density and height of the proposed development appropriate for this location?
4. Does the proposed development maintain the character of the area or neighbourhood?
5. Is the subject proposal compatible with the surrounding existing uses?
6. Is the subject proposal compatible with the surrounding built form in terms of the building arrangement, height, density, massing, setbacks, stepbacks, transition and spacing – and does it sufficiently mitigate adverse impacts on the surrounding context?
7. Does the subject proposal contribute to the creation of an attractive public realm?
8. Does the subject proposal meet the intensification and compatibility policy tests of the Urban Hamilton Official Plan?
9. Are the proposed site specific performance standards compatible and in keeping with the intent of the Zoning By-law?

Attachment 3- Order of Evidence

1. Sonoma Homes Inc.
2. City of Hamilton
3. Rosehaven Homes Limited and Ancaster Rose Homes Inc.
4. Participants
5. Sonoma Homes Inc. in reply

Attachment 4- 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, 416212-6349, or from the Board website at www.elfto.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 authorization 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.