

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 13, 2017

CASE NO(S): PL170282

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

Applicant and Appellant: Queenston Road Holdings Inc.
Subject: Request to amend the Urban Hamilton Official Plan (UHOP) and Old Town Secondary Plan - Refusal of request by the City of Hamilton

Existing Designation: Mixed Use – Medium Density (UHOP); General Open Space (Old Town Secondary Plan)

Proposed Designated: Neighbourhoods and Open Space (UHOP); Mixed Use – Medium Density, High Density Residential 1 and Natural Open Space (Old Town Secondary Plan)

Purpose: To permit the development of a 19 storey residential building, recognize the existing 2 storey commercial building and open space lands

Property Address/Description: 860 Queenston Rd.
Municipality: City of Hamilton
Approval Authority File No.: UHOPA-16-01
OMB Case No.: PL170282
OMB File No.: PL170282
OMB Case Name: Queenston Road Holdings 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: Queenston Road Holdings Inc.
Subject: Application to amend Zoning By-law No. 05-200 – Refusal of Application by the City of Hamilton

Proposed Zoning: Adding lands to Zoning By-law No. 05-200 to be zoned Conservation/Hazard (P5)

Purpose: To recognize the open space lands

Property Address/Description: 860 Queenston Rd.
Municipality: City of Hamilton
Municipality File No.: ZAC-16-009
OMB Case No.: PL170282
OMB File No.: PL170283

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

Applicant and Appellant:	Queenston Road Holdings Inc.
Subject:	Application to amend Zoning By-law No. 3692-92 - Refusal of Application by the City of Hamilton
Existing Zoning:	General Commercial (GC) Zone and Open Space (OS) Zone
Proposed Zoning:	Site-Specific General Commercial (GC) Zone, Site-Specific Multiple Residential (RM5) Zone and to remove lands to be rezoned in Zoning By-law No. 05-200
Purpose:	To permit the development of a 19 storey residential building and recognize the existing 2 storey commercial building
Property Address/Description:	860 Queenston Rd.
Municipality:	City of Hamilton
Municipality File No.:	ZAC-16-009
OMB Case No.:	PL170282
OMB File No.:	PL170284

Heard: August 9, 2017 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Queenston Road Holdings Inc.

P. Foran

City of Hamilton

P. MacDonald

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA ON
AUGUST 9, 2017 AND ORDER OF THE BOARD**

[1] A first Pre-Hearing Conference (“PHC”) was held to ascertain interested parties and participants and to set out the process on a go-forward basis.

[2] The parties to the appeal are:

a. Queenston Road Holdings Inc. (“Appellant”) represented by counsel

Patricia Foran.

- b. City of Hamilton (“City”) represented by counsel Patrick MacDonald.

[3] The participants to the hearing are:

- a. Mr. Paul Glenney;
- b. Mr. Alan Mills;
- c. Mr. David Bruzzese and Ms. Rosemary Bruzzese; and
- d. Mr. Ed Paprocki.

[4] The background on this matter as contained in the Board file is as follows:

- a. The Appellant made applications to the City seeking permission to:
 - i. recognize the existing two-storey commercial building at its property located at 860 Queenston Road (“subject property”) and facilitate a future severance of that part of the subject site;
 - ii. permit the balance of the subject property to be developed for a 19-storey residential building with 223 units; and
 - iii. recognize and protect in an appropriate land use designation, lands identified as an environmental linkage on the subject property.
- b. The application was subsequently revised to include 219 units, consisting of 116 one-bedroom units and 103 two-bedroom units. The Appellant worked with the Hamilton Conservation Authority who were satisfied with the recognition of the environmental linkage and the delineation of the

stable top of bank.

- c. The Official Plan Amendment (“OPA”) application was to change the land use designation on schedule "E-1", Urban Land use Designations of the City’s Official Plan:
 - i. from "Mixed Use - Medium Density" to "Neighbourhoods" and
 - ii. from "Mixed Use - Medium Density" to "Open Space" to protect the natural open space portion of the site.

- d. Further there was an application to change the land use designation of the Old Town Secondary Plan in the Urban Hamilton Official Plan (“UHOP”):
 - i. from "General Open Space" to "Mixed Use - Medium Density" and
 - ii. from "General Open Space" to "High Density Residential 1" and
 - iii. from "General Open Space" to "Natural Open Space" to provide for the conservation of a portion of the lands as a Linkage; and
 - ix. the proposed OPA was also required to establish a Site Specific Policy Area in order to permit the density for a multiple dwelling to be in excess of 200 units per hectare and to permit a maximum of 219 units.

- e. Further there was an application for a Zoning By-Law Amendment (“ZBA”):
 - i. from General Commercial "GC" Zone and Open Space "OS" Zone to a Site-Specific General Commercial "GC" Zone; and

- ii. and from Open Space "OS" Zone and General Commercial "GC" Zone to a Site-Specific Multiple Residential "RM5" Zone, Modified; and
- iii. and from Open Space (OS) Zone to the Conservation/Hazard (P5) Zone

[5] The applications for the OPA and ZBA's were refused by the City which prompted the appeal to this Board. Therefore the Board has three files associated with these matters as follows:

- a. OMB File No. PL170282 – an appeal launched under subsection 22(7) of the *Planning Act* ("Act") for the OPA which was refused by the City; and
- b. OMB File No. PL170283 – an appeal launched under subsection 34(11) of the Act for the ZBA against Zoning By-Law ("ZBL") No. 05-200 which was refused by the City; and
- c. OMB File No. PL170284 – an appeal launched under subsection 34(11) of the Act for the ZBA against ZBL No. 3692-92 which was refused by the City.

[6] The Notice of Appeal set out the following reasons:

- a. The Decision [of the City] is not consistent with the Provincial Policy Statement, 2014 ("PPS"), including, without limitation, the following policies: 1.1.1 (a, b, e, h), 1.1.3.2, 1.1.3.3, 1.1.3.6, 1.4.1 a), 1.7.1 (b, c, d), 2.1.1, 2.1.2, 2.6.1, 2.6.2, and 3.1.1 b);
- b. The Decision does not conform with the Growth Plan for the Greater Golden Horseshoe, 2006 ('Growth Plan"), including, without limitation, with respect to the following policies: 2.2.2.1 (a, b, d, e, h) and 2.2.3.7;

- c. The Decision does not conform to the general intent of the Official Plan, including, but not limited to policies related to the Urban Corridors, Sub-Regional Service Node, Neighbourhoods Designation, Residential Intensification, Housing, Open Space, Natural Heritage System, Linkages and policies under the Old Town Secondary Plan;
- d. The Decision fails to recognize that the proposed development is compatible with adjacent uses and the character of the neighbourhood and provides for adequate transition to adjacent properties. The proposal represents an efficient development on an underutilized parcel of land, in an area well served by community facilities. The Decision to refuse the applications does not support existing and future planned higher order transit initiatives in the City;
- e. The Decision fails to address or acknowledge the detailed reasons and analysis provided by City Planning staff who recommended approval of the proposed development for reasons outlined in their Staff Report PED17008 presented to the Planning Committee and Council.

[7] The City's in-house Planning Department had supported the applications and recommended approval to City Council as set out in their Planning Staff Report dated January 31, 2017.

[8] The parties were working on preparing a Procedural Order and while a draft was provided to the Board, a further refined version has since been submitted and is attached to this decision. This Procedural Order governs the hearing and sets out the obligations of both parties and participants, appended to this decision as Attachment 1. Although the Procedural Order does not identify the Participants in the Order of Evidence, they will be heard at a time convenient to the Member presiding and with regard to the schedules of the Participants.

[9] The Board scheduled a follow-up PHC to be conducted via Telephone Conference Call (“TCC”). The TCC will be held on **Friday, October 13, 2017 at 9 a.m. with call-in numbers 416-212-8012 or toll-free 1-866-633-0848 and when prompted enter code 1006967#**. This TCC is for parties only. I will continue to case-manage this file.

[10] The Board also scheduled hearing dates for 10 days commencing **Monday March 12, 2018 at 10:30 a.m. and ending Friday, March 23, 2018**. The venue will be:

**Dundas Town Hall
OMB Hearing Room (2nd Floor Auditorium)
60 Main Street
Dundas Ontario**

[11] I am not seized of this hearing.

[12] If possible, the City indicated it would try to secure an alternate venue for one day during the hearing which would be closer to Stoney Creek where many of the participants reside. Ms. Bruzzese had indicated that some of her neighbours who were elderly had some difficulty in navigating public transit to travel from Stoney Creek to Dundas. The Board appreciates the City’s efforts to try to secure an alternate location to accommodate those individuals.

[13] The specifics of the alternate venue and date should be communicated to the Board’s Case Co-Ordinator, Ms. Leesa Kwong so that the participants are informed in advance.

“J. V. Zuidema”

J. V. ZUIDEMA
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

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

ONTARIO MUNICIPAL BOARD

Procedural Order

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

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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. The attachments to this Procedural Order form part of the Board's Order.

Organization of the Hearing

2. The hearing will begin on **March 12, 2018** at 10:30 a.m. at:

Dundas Town Hall
2nd Floor Audit/ OMB Hearing Room
60 Main Street
Dundas, Hamilton, ON
3. The length of the hearing will be **ten (10) hearing 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 parties' Issues List will be attached as **Attachment 2** to this Order. 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 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 **December 12, 2017**. 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. Expert witnesses in the same field shall have a meeting on or before **January 31, 2018** 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.

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. A witness or participant must provide to the parties a witness or participant statement on or before **January 11, 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 **January 11, 2018**, the parties shall provide copies of their expert witness statements to the other parties. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
14. On or before **February 9, 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 a written response to any written evidence on or before **February 9, 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. Documents may be delivered in person, by courier, by facsimile, by registered or certified mail, by email or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules [26 to 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.
19. 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.
20. The Board may be spoken to in the event some matter should arise in connection with the implementation of this Procedural Order.

This Member is not seized.

So orders the Board.

Attachment 1

LIST OF PARTIES AND PARTICIPANTS

PARTIES:

1. Queenston Road Holdings Inc.

Patricia A. Foran
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Barristers and Solicitors
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2. City of Hamilton

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PARTICIPANTS:

1. Paul Glenney

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3. David and Rosemary Bruzzese

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Email: roseanddave102@hotmail.com

4. Ed Paprocki

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Stoney Creek, ON L8G 4A9
Email: ep71166@gmail.com

Attachment 2

ISSUES LIST

City of Hamilton

1. Is the proposed development consistent with the intensification policies in Provincial Policy Statement 2014? This includes, but not restricted to, policies 1.1.2, 1.1.3.2(b), 1.1.3.3, 1.1.3.4, 1.1.3.5, 1.4.1, Definitions of Intensification and Residential Intensification.
2. Does the proposed development conform with the intent of “Urban Structure” on Schedule “E” of the Urban Hamilton Official Plan (UHOP)?
3. Does the proposed development conform with the “Mixed Use – Medium Density” designation on Schedule “E-1” of the UHOP?
4. Does the proposed development conform with, but not restricted to, sections 2.4.10, 2.6, and 4.6 of the UHOP?
5. Does the proposed development conform with the Old Town Secondary Plan?
6. How do the residential density policies of the UHOP and the Old Town Secondary Plan apply to the proposed development?
7. How does the height of the proposed building relate to the density maximums in the UHOP and the Old Town Secondary Plan, including any revisions or a new secondary plan?
8. Has the applicant demonstrated that the proposed vehicle access to the residential development is appropriate and functional?
9. Does the proposed development harmoniously integrate with and respect the existing residential community by incorporating common characteristics of the area?
10. Does the proposed development change the character of the area and/or destabilize the character of the area?
11. Does the proposed development support the “Mixed Use – Medium Density” in the designated Secondary Corridor along Queenston Road?
12. Do the proposed official plan, secondary plan and zoning by-law amendments represent good planning?
13. In considering the proposed amendments, should the applicant concurrently bring forward an application for consent to sever the development parcel?
14. Is the proposed open space land considered as a separate parcel or is it part of the development site and likely in a conservation easement?

NOTE: The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing.

Attachment 3

ORDER OF EVIDENCE

1. Queenston Road Holdings Inc.
2. City of Hamilton
3. Reply by Queenston Road Holdings Inc.