

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: December 10, 2019

CASE NO(S): PL170742

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Bunge Canada
Appellant:	Harbour West Neighbours Inc. & Herman Turkstra
Appellant:	Parrish & Heimbecker Ltd.
Subject:	By-law No. BL 17-095
Municipality:	City of Hamilton
OMB Case No.:	PL170742
OMB File No.:	PL170742
OMB Case Name:	Bunge Canada v. Hamilton (City)

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

Appellant:	Harbour West Neighbours Inc. & Herman Turkstra
Subject:	By-law No. BL 17-096
Municipality:	City of Hamilton
OMB Case No.:	PL170742
OMB File No.:	PL170743

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Bunge Canada
Appellant:	Harbour West Neighbours Inc. & Herman Turkstra
Appellant:	Parrish & Heimbecker Ltd.
Subject:	Proposed Plan of Subdivision

Property Address/Description: 65 Guise St. E
 Municipality: City of Hamilton
 Municipal File No.: 25T201605
 OMB Case No.: PL170742
 OMB File No.: PL170744

Heard: November 22, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

City of Hamilton (“City”)	B. Kussner/J. Wice
Waterfront Shores Corporation	I. Kagan/K. Jennings
Herman Turkstra	Self-represented
Harbour West Neighbours Inc.	A. Toumanians
Parrish & Heimbecker Ltd.	P. Patterson
Bunge Canada Inc.	No one appeared

MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON NOVEMBER 22, 2019 AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Tribunal concerns the appeal of the Zoning By-law Amendment (“ZBA”) and Draft Plan of Subdivision (“Draft Plan”) for certain lands owned by the City generally described as being Pier 8. The Subject Lands are about 12.95 hectares in area, located in the northern part of the City fronting onto the waterfront, and currently zoned as F-4/S838A-Waterfront Services District Modified.

[2] The proposal is that the lands be redeveloped in accordance with the West Harbour Secondary Plan (“Setting Sail”) for a Mixed Use development.

[3] The ZBA and the Draft Plan were appealed to the Tribunal by Herman Turkstra in his personal capacity, Harbour West Neighbour Inc., and Parrish & Heimbecker Ltd.

[4] The hearing of the appeals was bifurcated into Phase I dealing with the residential component and Phase II dealing with the industrial component.

[5] Procedural Orders and Issues Lists had been prepared for Phase I and Phase II. The parties engaged in Tribunal-led mediation which has resulted in the settlement of the Phase I hearing. The Tribunal was asked to convene a Settlement Hearing with regard to the Phase I portion of the appeal. At that time the Tribunal heard expert land use planning evidence on behalf of the City and on behalf of Waterfront Shores Corporation, and for the reasons set out below, allowed the appeal in part, and withheld its Final Order pending the finalization of the Phase II appeal.

THE DECISION

[6] This decision only deals with Phase I of the appeals on PL170742 concerning Pier 8. This decision does not deal substantively with any of the outstanding issues for Phase II of the hearing.

[7] The Subject Lands are City owned, located on the waterfront, in a built-up area of the City.

[8] The Subject Lands went through an extensive secondary plan process that was eventually approved by the Ontario Municipal Board.

[9] The matters appealed to the Tribunal now relate to the ZBA adopted by City Council and the Draft Plan.

[10] After a somewhat contentious commencement to this hearing process, the Phase

I parties sought and participated in Tribunal-led mediation.

[11] That Tribunal-led mediation resulted in Minutes of Settlement executed by all the Phase I parties, the withdrawal of some parties' appeals on the Draft Plan, and a revised ZBA as found in Exhibit 3A (clean version) and Exhibit 3B (track changes).

[12] The Tribunal heard the uncontested and uncontroverted expert land use planning of James Webb on behalf of the City and Andrew Ferancik on behalf of Waterfront Shores Corporation.

[13] The Tribunal notes that the proposed ZBA proposes areas of:

- 1) Waterfront Multiple Residential;
- 2) Waterfront Mixed Use;
- 3) Waterfront Prime Retail; and
- 4) A 30 metre Open Space City owned block that virtually encompasses the entire perimeter of the Pier 8 lands.

[14] Moreover, the proposed ZBA sets minimum and maximum heights, sets minimum and maximum number of units per block, sets an overall maximum number of units, and provides a minimum number of "family size" residential units. The Tribunal finds that the Subject Lands are on the waterfront, are in the built-up area of the City, are adjacent to an existing residential neighbourhood and are brownfields.

[15] The proposed ZBA includes a number of holding provisions to be satisfied before the zoning becomes final including a Record of Site Condition.

[16] The evidence of the land use planners is that the proposed Zoning By-law:

- a) appropriately considers all the provincial interests in section 2 of the *Planning Act*,

- b) is consistent with the Provincial Policy Statement 2014 as being an appropriate location for growth and development, being residential intensification; being compact in form; utilizing existing infrastructure; and developing an underutilized area, which is a brownfield;
- c) conforms to the Growth Plan 2019 for similar reasons; and
- d) conforms to Setting Sail as implementing the policy objectives as set out therein.

[17] Accordingly the Tribunal will (for Phase I only):

- a) allow the appeals in part and approve the ZBA as found in Exhibit 3A;
- b) acknowledge that the Phase I appeals of the Draft Plan are withdrawn;
- c) acknowledge that this approval is without prejudice with regard to the Phase II appeal, which remains outstanding; and
- d) the Tribunal will withhold its Final Order on this Phase I appeal pending the finalization of the Phase II appeal.

[18] This is the Interim Order of the Tribunal.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

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Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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