

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 10, 2017

CASE NO(S): PL170742

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. and Herman Turkstra
Appellant: Parrish & Heimbecker, Limited
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. and 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. and Herman Turkstra
Appellant: Parrish & Heimbecker, Limited
Subject: Proposed Plan of Subdivision
Property Address/Description: 65 Guise Street East
Municipality: City of Hamilton
Municipal File No.: 25T201605
OMB Case No.: PL170742
OMB File No.: PL170744

Heard: November 3, 2017 in Dundas, Ontario.

APPEARANCES:

Parties

Counsel

Harbour West Neighbours Inc.
and Herman Turkstra

Herman Turkstra
(for counsel of record Scott Snider)

Parrish & Heimbecker, Limited

Pitman Patterson

Bunge Canada

Mary Flynn-Guglietti

City of Hamilton

Michael Kovacevic

MEMORANDUM OF ORAL DECISION DELIVERED BY S. TOUSAW ON NOVEMBER 3, 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 the three Appellants in opposition to proposed development in the area of Pier 8 (the “lands”) on the Hamilton Harbour in the City of Hamilton (the “City”). The City passed Zoning By-law Amendments (the “ZBA”) and granted draft plan approval to a plan of subdivision (the “subdivision”) to facilitate mixed use development on the former industrial lands of Pier 8. The City owns the lands and intends to sell properties for development.

[2] In addition to addressing procedural matters, this PHC was a motion hearing of the City’s request that the Board dismiss the appeal of Bunge Canada (“Bunge”). Prior to the hearing, the parties had filed motion materials in accordance with the Board’s *Rules of Practice and Procedure*.

MOTION TO DISMISS

[3] At the outset of the hearing, the parties reached agreement on the motion and the Board approved same, as outlined below.

[4] First, the Board granted Bunge an abridgement of the notice rules for its filing of an amended notice of response to motion. The amended response had been provided to the City one day before the hearing.

[5] Second, the Board granted party status to Bunge. Although Bunge's appeal to the ZBA and subdivision was dismissed as set out below, Bunge satisfied the tests for party status. The *Planning Act* (the "Act") enables the Board to add a party where there are "reasonable grounds" under s. 34(24.1) and (24.2) for a ZBA, and under s. 51(52.1) and (52.2) for a subdivision.

[6] What constitutes reasonable grounds were enunciated by Board Member S. J. Stefanko in his 2010 decision of *1137528 Ontario Ltd. v. Oakville (Town)* [2010] O.M.B.D. No. 770. Cited in many subsequent decisions, the Oakville case identified several "obvious factors" for assessing reasonable grounds. The factors are paraphrased as follows: whether a similar appeal to the same instrument has already been filed; whether the public interest will be advanced; whether prejudice would be suffered by another party; whether the person has a direct interest in the matter; whether a multiplicity of proceedings can be avoided; and whether the historical background to the issue supports the request.

[7] The parties agreed that Bunge's appeal satisfied each of the foregoing factors. Bunge's interests are similar to and aligned with the appeal filed by Parrish & Heimbecker, Limited ("P&H") and may therefore shelter under the P&H appeal. Both companies operate industrial facilities at the harbour to the east of the lands and are concerned with the potential restrictions on their operations which may arise from mixed use development. It is in the public interest to ensure that employment lands containing industrial uses are adequately considered when planning for other uses on nearby

lands. Apart from a potentially minor increase in the length of the hearing, no party would be prejudiced by Bunge's party status. Bunge's direct interest in the matter is confirmed by its existence as a harbour industrial operation located on a nearby pier to Pier 8. Bunge has an interest in the property it occupies under a lease from the Hamilton Port Authority effective to 2039. Avoiding a multiplicity of proceedings was not particularly relevant here, and Bunge's argument related to historical background was not contested by the City.

[8] The party status granted to Bunge is subject to it sheltering under the appeal by P&H. The scope of Bunge's appeal is defined by the P&H appeal. Any dispute with respect to Bunge's issues will be dealt with at a further PHC, subject to the restrictions on Bunge's party status as ordered herein.

[9] Third, the Board dismissed Bunge's appeal. The Act restricts an eligible appellant to persons or public bodies "that made oral submissions at a public meeting or written submissions to the council" in s. 34(19) for a ZBA and in s. 51(39) for a subdivision. Bunge did not participate orally or in writing in these files before they were approved by the City. The Board agreed with both counsel that it has no discretion in dismissing an appeal where the appellant did not satisfy the prerequisite condition of participating in the process before Council made its decisions.

A SECOND PHC

[10] The parties requested a further PHC to give time for the City to advance additional studies in an effort to satisfy certain issues, and to finalize an Issues List. The parties agreed to circulate their Issues List with the other parties by **December 4, 2017** and the City will provide a final Issues List to the Board and all parties by **January 15, 2018**. In the alternative, any disputed issues will be identified for the next PHC. With respect to environmental studies being conducted by the City, P&H and Bunge identified the need for non-disclosure agreements with the City in connection with their participation in the studies.

ORDER

[11] The Board ORDERS that party status is granted to Bunge Canada subject to it sheltering under the appeal by Parrish & Heimbecker, Limited. The scope of Bunge's appeal is defined by the P&H appeal.

[12] The Board ORDERS that the City's motion is granted and the appeal by Bunge Canada is dismissed.

[13] The Board ORDERS the parties to circulate their Issues List to all parties by **December 4, 2017**, and the City to provide the Board and all parties with a consolidated Issues List (or identified disputed issues) by **January 15, 2018**.

[14] The next Pre-Hearing Conference will commence at **10 a.m. on Tuesday, February 27, 2018** at:

**Dundas Town Hall
2nd Floor Auditorium
60 Main Street
Dundas, Ontario**

[15] No further notice will be given.

[16] 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

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