

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



**ISSUE DATE:** January 16, 2019

**CASE NO(S):** PL180175

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(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 Nos. 6593 & 05-200 - Refusal or neglect of the City of Hamilton to make a decision
Existing Zoning:	P2, AA/S-684 (Agricultural District- Special Provision 684), C (Urban Protected Residential etc.) and AA (Agricultural District)
Proposed Zoning:	E-3 District with site specific modifications
Purpose:	To permit the development of four residential condominium apartment buildings
Property Address/Description:	1518, 1530 and 1540 Upper Sherman Avenue
Municipality:	City of Hamilton
Municipality File No.:	ZAC-17-078, UHOPA-17
OMB Case No.:	PL180175
OMB File No.:	PL180175
OMB Case Name:	Sonoma Homes Inc v. Hamilton (City)

**Heard:** October 23, 2018 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

Sonoma Homes Inc.  
(1804482 Ontario Limited)

**Counsel**

Denise Baker

City of Hamilton

R. Andrew Biggart and V. Wong

**MEMORANDUM OF ORAL DECISION DELIVERED BY JOHN DOUGLAS ON  
OCTOBER 23, 2018 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] This was the first Pre-hearing Conference (“PHC”) regarding an appeal by Sonoma Homes Inc. (1804482 Ontario Limited) (“Applicant/Appellant”) of the failure of the City of Hamilton (the “City”) to make a decision on an application to amend City Zoning By-law (“ZBL”) Nos. 6593 and 05-200 (“Zoning By-laws”).

[2] The Affidavit of Service was entered as Exhibit 1.

[3] Counsel for the Applicant/Appellant, Denise Baker, advised the Tribunal that originally there had been an application for an Official Plan Amendment as well as the application for the Zoning By-law Amendment in this matter. A small portion of the site had been previously owned by the City. This portion of land was deemed surplus and sold to Sonoma Homes Inc. In September 2018, the City redesignated the “surplus” lands on its own to a “Neighbourhood” designation in the OP. As a result an Official Plan Amendment for the “surplus” lands that had been initiated by Sonoma Homes Inc. was no longer required. An Official Plan Amendment is not before the Tribunal in this matter.

[4] Ms. Baker advised that an application was submitted in October 2017 to amend the existing City of Hamilton ZBL No. 6593, and the new Comprehensive ZBL No. 05-200. The application was to facilitate the development of four residential condominium apartment buildings, one at eight-storeys, one at nine-storeys and two at 11-storeys. The application was deemed complete on November 3, 2017.

[5] A public meeting was held with respect to the proposed development on January 23, 2018.

[6] Based on the comments received, Sonoma Homes Inc. made revisions to the plans. Ms. Baker advised that the new plans reduce the proposed heights of the four buildings to one at six-storeys, and three at eight-storeys. This results in a reduction of units from a total of 489 to 321. This total number of units is split between the four buildings. The revised site would have an average density of 174.5 units per hectare (“uph”). A total of 526 parking spaces is proposed, which meets the parking requirements in the Zoning By-laws. A 45-degree angular plane has been applied to all buildings and all buildings now comply.

[7] Ms. Baker stated that it is the revised proposal for which Sonoma Homes Inc. is asking a hearing be scheduled. She requested that a nine- or ten-day hearing be scheduled for this matter.

[8] Mr. Biggart advised the Tribunal that Council had provided instructions to oppose the proposed development. He agreed with the number of days requested for a hearing.

### **PROCEDURAL ORDER**

[9] A draft Procedural Order (“PO”) was discussed at the PHC. Revisions/additions were required.

[10] As directed at the PHC, the Applicant/Appellant prepared and submitted a final draft of the PO to the Tribunal on November 23, 2018, which is appended as Schedule 1.

[11] The Tribunal notes that Issues 1 and 2 in Attachment 2 to the PO, are very general. The Tribunal directs the Parties to review and scope Issues 1 and 2 by identifying applicable specific policies within the Hamilton Official Plan and the Butler Neighbourhood Plan. The Parties are to jointly submit a revised Issues List to the Tribunal by no later than Friday, June 28, 2019. The PO appended here as Schedule 1 shall be in full force and effect to govern the proceedings leading up to and including the hearing. Once received by the Tribunal, the revised Issues List will replace the existing

Issues List as Attachment 2 to the PO.

## HEARING DATE

[12] A **ten-day** hearing for this matter has been scheduled to commence on **Monday, February 10, 2020 at 10 a.m.** at:

**Municipal Building  
Hearing Room 101  
50 Main Street East  
Hamilton, ON**

[13] The directions above are so ordered by the Tribunal.

[14] No further notice will be given.

[15] This Panel is not seized.

*“John Douglas”*

JOHN DOUGLAS  
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.

### **Local Planning Appeal Tribunal**

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

## SCHEDULE 1

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

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### Procedural Order

#### The Tribunal orders that:

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

#### Organization of the Hearing

2. The hearing will begin on February 10, 2020 at the Provincial Offences offices, 50 Main St. E., in the City of Hamilton.
3. The length of the hearing will be 10 days.
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** to this Order. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. The order of evidence at the hearing is set out in **Attachment 3** to this Order. The Tribunal 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 Tribunal.

### **Requirements Before the Hearing**

7. All parties and participants (or their representatives) shall provide a mailing address, email address and telephone number to the Tribunal as soon as possible. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Tribunal of the representative's name, mailing address, email address and phone number as soon as possible.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the City Clerk a list of the witnesses, the witnesses curriculum vitae and Acknowledgement of Experts Duty and the order in which they will be called. This list must be delivered on or before **April 30, 2019**. 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. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied upon at the hearing. Copies of this must be provided as in section 12. 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 Tribunal may refuse to hear the expert's testimony.
10. A witness and/or participant must provide to the Tribunal and the parties a witness or participant statement on or before **December 2, 2019**, or the witness or participant may not give oral evidence at the hearing.
11. 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, as in section 12.
12. On or before **December 2, 2019**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk of the City of Hamilton.

13. Parties may provide to all other parties and file with the City Clerk a written response to any written evidence on or before **December 27, 2019**.
14. On or before **January 24, 2020**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal on or before **January 24, 2020**.
16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal and the parties at least **February 3, 2020** that the written evidence is not part of their record.
17. Documents may be delivered by personal delivery, facsimile or registered or certified mail or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's Rules (Rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.
19. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment 4**.

This Member is not seized.

**Attachment 1**  
**LIST OF PARTIES/PARTICIPANTS**

**PARTIES**

1. **1804482 Ontario Limited**  
WeirFoulds LLP  
4100 – 66 Wellington Street West  
PO Box 35, Toronto-Dominion Centre  
Toronto, ON M5K 1B7

**Denise Baker**

Tel: 416-947-5090

Email: [dbaker@weirfoulds.com](mailto:dbaker@weirfoulds.com)

2. **Corporation of the City of Hamilton**  
Ritchie Ketcheson Hart & Biggart  
206 – 1 Eva Road  
Toronto, ON M9C 4Z5

**R. Andrew Biggart**

Tel: 416-622-6601 Ext. 227

Email: [abiggart@ritchieketcheson.com](mailto:abiggart@ritchieketcheson.com)

**PARTICIPANTS**

1. **Paul Busnello**  
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3. **Patricia Kay**  
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Email: [rickkay30@hotmail.com](mailto:rickkay30@hotmail.com)
4. **Doug Lockhart**  
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6. **Matthew Shephard**  
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7. **Allen Wilson**  
30 Cartier Crescent  
Hamilton, ON L8W 3L8  
Tel: 519-716-1336

## **Attachment 2**

### **Issues List**

1. Does the proposal conform to the planning policies of the Urban Hamilton Official Plan?
2. Does the proposal implement the Butler Neighbourhood Plan?
3. Does the proposal meet the residential intensification tests of the Urban Hamilton Official Plan?
4. Are the proposed scale, density and height of the proposed development appropriate for this location?
5. Does the proposal have any adverse impacts on the surrounding existing development with respect to shadowing, wind, overlook, privacy, noise, lighting and traffic?
6. Are the proposed site specific performance standards compatible and in keeping with the intent of the Zoning By-law?
7. Is the proposed road pattern and access to the proposed development appropriate and does it result in a functional road network to support the anticipated traffic associated with the development proposal?
8. Is the necessary infrastructure available to service the subject proposal?

### **Attachment 3**

#### **Order of Evidence**

1. 1804482 Ontario Limited
2. Corporation of the City of Hamilton
3. Participants
3. 1804482 Ontario Limited in Reply

## Attachment 4

### Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at <http://elto.gov.on.ca/tribunals/lpat/legislation-and-rules/>.

#### Meaning of terms used in the Procedural Order:

**Party** is an individual or corporation permitted by the Tribunal 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 must accept the other responsibilities of a party as set out in the 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.

**NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

**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 Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will 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 material and do not attend.

**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.

**Witness Statements:** A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (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. 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 the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

### **Additional Information**

**Summons:** A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal 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 Tribunal;  
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 Tribunal.