

ISSUE DATE:

June 29, 2010



PL100019

10-232

Ontario Municipal Board
Commission des affaires municipales de l'Ontario 

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Orev Investments Ltd.
Appellant: Saco Insurance Brokers Inc.
Subject: By-law No. 09-246
Municipality: City of Hamilton
OMB Case No.: PL100019
OMB File No.: PL100019

IN THE MATTER OF section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 63 of the Board's Rules of Practice and Procedure

Request by: Orev Investments Ltd.
Request for: Adjournment of a hearing event

APPEARANCES:

<u>Parties</u>	<u>Counsel/Agent*</u>
Orev Investments Ltd.	A. Wellenreiter
Saco Insurance Brokers Inc.	D. Sa*
1201159 Ontario Limited	P. Tice
City of Hamilton	J. Wice

DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD

The City of Hamilton enacted By-law 09-246 (By-law) and it is appealed by Orev Investments Limited (Orev) and Saco Insurance Brokers (Saco). The purpose of the By-law is to allow for a parking lot to be used in conjunction with the Hamilton General Hospital (also known as 1201159 Ontario Ltd.).

Mr. Wellenreiter called Mr. Dorfman, a qualified land use planner, who gave expert evidence on behalf of Orev. Mr. Dorfman testified that while the intent of the By-law is reasonable and represents good planning, the wording of the By-law makes it possible that parking be permitted for those other than employees of the hospital, a concern for his client. Accordingly, Mr. Dorfman suggested certain amendments to the By-law to ensure that the wording contained reflected the intent, being parking for employees and visitors to the hospital, as opposed to the wider public. Mr. Sa, the principal of Saco, expressed a similar concern but went further, indicating that the property should be development for mixed-use purposes, not as a parking lot. Alternatively, Mr. Sa also suggested that the By-law stipulate that the lease arrangements be fixed for a maximum period of 15 years, to ensure the property is eventually developed and does not remain as long term parking.

Following the evidence of Mr. Dorfman I was advised that Orev, the City and the Hospital had reached an agreement on a modified By-law. Mr. Sa was not opposed to the agreement, but reiterated his concern that the By-law be restricted to 15 years. On this point I find that such a restriction is not necessary as the Hospital's intention will be to enter into a lease arrangement for 15 years and that matter will be revisited in the future. It is not sensible to put in place a restriction at this time, nor is it necessary. On this matter I adopt and rely upon the submissions of Mr. Tice on behalf of the Hospital, and Ms Wice, on behalf of the City.

Based on the agreement between the parties and at their request, and relying on the opinion of Mr. Dorfman, the appeal is allowed in part and By-law 09-246 (which amends By-law 6593) is modified in accordance with Attachment "1", and as modified, is approved.

This is the Order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN
VICE-CHAIR

ATTACHMENT 1

Authority: Item 20, Economic Development
and Planning Committee
Report 09-026
CM: December 9, 2009

Bill No. 246

CITY OF HAMILTON

BY-LAW NO. 09-246

**To Amend Zoning By-law No. 6593
As Amended by By-laws 07-026 and 08-021**

Respecting Lands Located at 186 Ferguson Avenue North and 201 Robert Street

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item 20 of Report 09-026 of the Economic Development and Planning Committee at its meeting held on the 9th day December of 2009, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this by-law is in conformity with the Official Plan of the Hamilton Planning Area, approved by the Minister under the Planning Act on June 1, 1982.

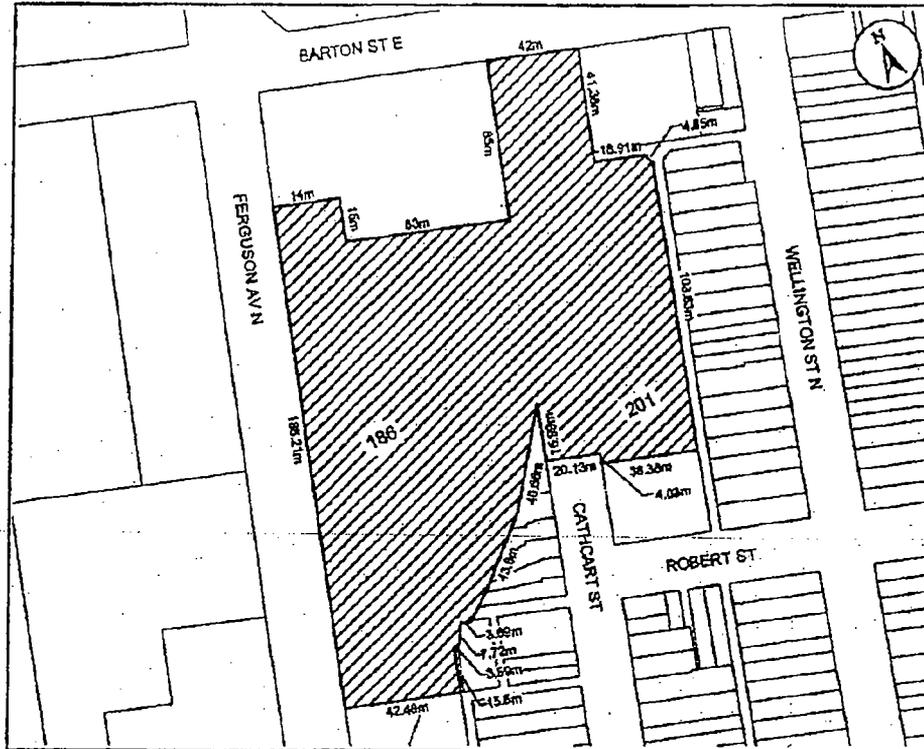
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. E3 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended by changing the zoning from the "H-H/S-1569a" (Community Shopping and Commercial, etc.) Holding District, Modified, to the "H-H/S-1569b" (Community Shopping and Commercial, etc.) Holding District, Modified,

on the lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That the "H" (Community Shopping and Commercial, etc) District, regulations, as contained in Section 14 of Zoning By-law No. 6593, as amended by By-law 07-026 and By-law 08-021, applicable to the subject lands, be further modified as follows:
 - (a) That Section 6.2 PERMITTED USES of By-law 07-026 is amended by adding the following additional use: A Parking Lot for a maximum of 640 spaces to be used for parking only in conjunction with the Hamilton General Hospital, or its successor hospital.
 - (b) That Section 3 of By-law 07-026 be amended by adding the following paragraph at the end thereof: The requirement for the removal of the 'H' Holding Symbol shall not apply to the development of a Parking Lot on the subject lands, under Section 2(a) of this By-law.
 - (c) That notwithstanding Section 18A(7), the minimum size of parking spaces shall be 2.6 metres by 5.5 metres.
3. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "H-H/S-1569b" (Community Shopping and Commercial, etc.) Holding District provisions, subject to the special requirements referred to in Section 2.
4. That Sheet No. E-3 of the District Maps is amended by marking the lands referred to in Section 1 of this by-law as S-1569b.
5. That Zoning By-law No. 6593 (Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1569b.
6. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this 9th day of December, 2009.



This is Schedule "A" to By-Law No. 09- Passed the day of 2009		_____ Clerk _____ Mayor
<h2 style="margin: 0;">Schedule "A"</h2> <p style="margin: 5px 0;">Map Forming Part of By-Law No. 09-_____</p> <p style="margin: 5px 0;">to Amend By-law No. 6593</p>		Subject Property 186 Ferguson Avenue North & 201 Robert Street Change in zoning from the "H-H/S1569a" (Community Shopping and Commercial, etc. - Holding) District, Modified to the "H-H/S-1569b" (Community Shopping and Commercial, etc. - Holding) District, Modified
Scale: N.T.S. Date: October 18, 2009	File Name/Number: ZAR-09-029 Planner/Technician: CT/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		