

ISSUE DATE:

**June 22, 2012**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL100691

By-law No. 12-166

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting the lands composed of Part of Lot 57, Concession 2 in the City of Hamilton.

(Approval Authority File No. OPA-07-014)

OMB File No. PL100691

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting Part of Lot 57, Concession 2 from "AA-S1353" (Agricultural) District to a site specific "DE" (Low Density Multiple Dwellings) District, Modified and "E" (High Density Multiple Dwellings) District, Modified to implement the Official Plan Amendment

OMB File No. PL100692

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 57, Concession 2 in the City of Hamilton

(Approval Authority File No. 25T-200712)

OMB File No. PL100706

#### **APPEARANCES:**

##### **Parties**

Deanlee Management Inc.

City of Hamilton

Niagara Escarpment Commission

Derek Schmuck

Roy Wolker

##### **Counsel**

P. DeMelo

N. Smith

J. Thompson

**DECISION DELIVERED BY H. JACKSON AND K. J. HUSSEY AND ORDER  
OF THE BOARD**

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**Introduction**

The matter before the Ontario Municipal Board ("Board") is an appeal by Deanlee Management Inc. ("Applicant"), from the City of Hamilton's ("City") failure to make a decision on proposed amendments to the Official Plan ("OP") and zoning by-law, with respect to 9.6 hectares of land composed of Part of Lot 57, Concession 2 in the City of Hamilton. The lands that are currently designated Major Institutional are required to be re-designated and rezoned to permit the Applicant's proposal for a development consisting of town homes and apartment-style buildings.

**Background and context**

The subject property, formerly owned by Chedoke Hospital, was declared surplus and offered for sale in 2006. It is known locally as the Chedoke Brow Lands. It is bounded by the brow of the Niagara Escarpment on the north side and Scenic Drive that encircles the land on the south side. The site is bisected by Sanatorium Road that leads south to Mohawk Drive. The eastern portion is comprised mainly of a large woodlot and on the west side, there is a smaller woodlot. A portion of Chedoke Creek flows to the north.

The Chedoke Hospital is to the south of Scenic Drive. There is a municipally owned storm water treatment pond at the southwest corner of Scenic Drive and Sanatorium Road and on the southeast corner there is a new, four-storey residence for Columbia College. There are low density residential uses to the east and west of the subject site and there is a golf course to the north at the toe of the escarpment. The Brow Trail, part of the Bruce Trail, occurs along the brow of the escarpment.

The subject property is historically and physically unique and was originally developed as a sanatorium for the treatment of tuberculosis patients. The physical setting of the buildings within the landscape was designed intentionally to provide a tranquil, natural environment to assist in the patients' recovery. The open space remains an important characteristic of the neighbourhood. The first building on the portion of the lands north

of Scenic Drive was the Brow Infirmary, built in 1916. Subsequent buildings that were added to the site were clustered, with curved roads and open spaces between the buildings. There are important cultural heritage structures remaining on the site that are designated under the *Heritage Act* and/or identified by the City in its inventory of heritage properties.

The Applicant purchased the subject property and in 2007, submitted an application for a development consisting of town homes and apartment buildings. Existing heritage buildings would be retained and used if possible.

The original application proposed buildings with up to 10 storeys. Various studies were commissioned to support the proposed development, including planning, transportation, visual impact assessments, archaeological, heritage, phase 1 environmental site assessments and soils investigations.

The proposal was modified to have apartment buildings up to six storeys, with 600 standard residential units. At this number of units, it was determined that there would be no servicing constraints and no traffic issues that would restrict development on the site. Transit is available to the site.

The Applicant undertook a series of public meetings and consultations and had many meetings with City planning staff on the proposed development. Consultation with the public indicated that the public wanted very little to no development at the site. Ultimately, on June 10, 2010, City planning staff recommended approval of the application to the Economic Development and Planning Committee (Exhibit 11).

Council neglected to make a decision regarding the applications and on June 30, 2010, the Applicant filed these appeals.

## **Issues**

### Niagara Escarpment Commission (NEC)

At the start of the hearing, the Board was advised that the Applicant and the NEC had reached a settlement. Counsel for the NEC advised the Board that the concerns of the NEC were addressed in the Minutes of Settlement of May 26, 2011 (Exhibit 1), and the

subsequent Addendum to the Minutes of Settlement, dated December 6, 2011 (Exhibit 2).

The NEC originally had the following concerns regarding the proposal:

1. Views from a distance to the brow, that is, would there be a sky-lining of buildings above the vegetation?
2. Would there be sufficient setback from the brow?
3. Would sufficient natural features on the site be preserved to retain the park-like setting of site that currently exists?
4. Would visual access from the neighbourhood into the site be preserved?

Counsel advised that the first concern is no longer an issue, as the proposed buildings will have a maximum height of six storeys, rather than eight storeys as was contemplated in an earlier proposal. With regard to the setback from the brow, there is an agreed minimum 30 m setback that is carried through to the current Minutes of Settlement and this satisfies the NEC. With respect to the third concern, the NEC is satisfied that the natural features to be retained will preserve the open character of the site.

With regard to the fourth concern, it was agreed that the lands would be subjected to a Holding provision (H symbol) under the zoning by-law. The development would require a full visual impact analysis to be done at the site planning stage for the removal of the holding zone. As described by the NEC, there is still a concern about the view, but this will be provided for by a process that requires a master site plan and precinct plan for each development phase, and includes that the required studies be conducted to the satisfaction of the Director of Planning.

The specific matters to be addressed in the visual impact assessment, as agreed between the NEC and Deanlee Management Inc., are provided in Attachment "4" to this Board Order. This document shows the specific view-sheds, and in red-line, the points at which the visual impact should be assessed. Through this mechanism, the NEC is satisfied that the visual impact will be addressed in consultation with the NEC.

The proposed development must conform with the purpose of the Niagara Escarpment Plan (NEP). Counsel for the NEC stated that she was satisfied that the documents presented address the NEC concerns in a manner that the NEC considers appropriate.

On that basis, the NEC withdrew from the hearing.

Derek Schmuck

Derek Schmuck, who requested and was granted party status, withdrew his appeal before the start of the hearing.

The City

Agreed statement of facts:

The City and the Applicant submitted an agreed statement of facts (Exhibit 6). The City and the Applicant agree on the following:

- Medium density appropriate
- 2:1 for retirement units
- Maximum unit count and Gross Floor Area (GFA) on west side of site
- Ground floor commercial uses
- No traffic constraints
- No servicing constraints
- In-force OP applicable (not the new OP subject to appeal)
- Urban in NEC plan, do not require development permit under NEC
- Should provide access to Bruce Trail
- 30 m setback from brow
- A zoned open space

- Chedoke Creek not dedicated to City
- Storm Water Management (SWM) facility to be retained in private ownership (maintenance by condominium)
- No physical parkland dedication
- Parkland credit due to brow dedication
- Listed (not designated)
- Designated are the Brow and Long and Bisby buildings
- Cultural heritage features are dealt with appropriately
- Appropriate implementation framework (in OP)
- Further visual impact assessments prior to site plan approval by NEC

The parties agreed on a series of actions (“a tool box”) for the implementation of the development, including:

- Holding provisions will be in place.
- The site will not be developed all at once, but over time.
- Studies have been done for a macro level of buildings, but would need to be updated depending on the actual plan as some of the studies can only be done when the site plan is complete.

### **Remaining Issue**

#### The City, Roy Wolker and area residents

Notwithstanding the significant amount of negotiation and agreement that was reached between the parties prior to the hearing, a number of issues remain outstanding.

1. Unit Yield and Density

- a) Should the floodplain be included for purposes of calculating net residential density?
- b) What is an appropriate unit yield on these lands (450 versus 529)?
- c) Is the density proposed in the Deanlee planning documents acceptable and does it constitute medium density residential development?
- d) Should the zoning by-law exclusion from the unit yield cap for dwelling units in an existing building apply where the Brow Infirmary building is demolished and replaced (Mr. Wolker's concern)?

2. Maximum Building Height

- a) Should building heights be restricted to 4 storeys for buildings along Scenic Drive in Area B?
- b) Should building heights be restricted to 4 storeys for the entire development (Mr. Wolker's concern)?

Mr. Wolker and the area residents are also concerned about open space, cultural and natural heritage and conformity with the NEP, as specified below:

3. Landscaped Open Space Along Scenic Drive in Area A

- a) What is the appropriate percentage of landscaped open space along Scenic Drive in Area A in relation to the policy objective of clustering town homes along a limited portion of the Scenic Drive frontage in order to preserve an open space character along Scenic Drive?

4. Cultural Heritage Features

- a) Does the proposed development protect the cultural heritage landscape and identified built heritage features, in conformity with Section C.6 of the Official Plan?

## 5. Natural Heritage

- a) Does the proposed site plan and design account for the fact that the natural heritage is an integral and significant part of the cultural heritage?

### The witnesses

Wendy Nott, who was retained by the Applicant, and Jamie Bennett, who was retained by the City, provided opinion evidence on land use planning. Dr. Barry Colbert was called as a lay witness by Mr. Wolker. Dr. Colbert is a professor of policy and strategic management and Chair of the Board of "Sustainable Waterloo Region". He participated in the public meetings related to this proposed development as he and his family are long-time residents of Hamilton. Dr. Colbert has lived adjacent to the Brow Lands for nine years.

A number of local residents testified in opposition to the proposal. Among other concerns, the residents are of the view that the development is too intense and does not maintain the open, park-like setting of the area.

### **Developmental Concept**

Ms. Nott described the development concept with the assistance of Exhibit 5, a figure showing the "with prejudice" re-development plan, dated September 29, 2011. The lands are to be developed comprehensively as a condominium site. The section of Sanatorium Road within the site would be closed to through traffic and the closed portion of the road would be dedicated to the City, to be used for the Brow Trail. Sanatorium Road from Scenic Drive into the development site would be maintained as a private road. This road would also provide pedestrian access to join up with the Brow Trail.

The proposed development consists of 529 conventional townhouse and apartment units. However, the Applicant has proposed that one or more of the buildings would have retirement lifestyle units. These generally are smaller units and generate less traffic and have fewer other impacts. In light of that fact, the replacement is on a 2:1 basis, which means that if standard residential units are converted to retirement lifestyle units, they can be converted 2:1. The Applicant therefore has the option to have 429



conventional town home and apartment units and 200 active retirement lifestyle units (or some other appropriate combination).

There is GFA credit if any existing buildings are retained and used, thus providing an incentive to use the existing buildings. Live-work or home occupation and commercial uses will be permitted at some locations.

There is currently a significant amount of pedestrian activity at the site. The extension of the Brow Trail and open landscape areas would provide added benefit to the residents as well as to the public.

The Site is comprised of three main areas:

1. Area A

There is no dispute between the City and Applicant regarding this area, as shown in Schedule J-1 of Exhibit 20, the proposed modified Chedmac Planning Area Secondary Plan.

There are five town home units (Blocks A to F) proposed, consisting of four units each. These blocks front onto either Scenic Drive or the Brow. The units are designed in a manner to maintain an open landscape character. There are large Norway maples along the west side of Scenic Drive that are to be preserved as long as they are healthy. Three new, four-storey apartment buildings, Building I, J, and K, are proposed within the interior in this area. The existing Brow building is proposed to be retained and converted, if possible. If not, it will be demolished and rebuilt. If demolished, the same building footprint will be used. For the Brow Annex building, the proposal is to retain the original portion and to demolish the more recent additions. The Moreland building is to be retained wherever possible and converted.

2. Area B

Area B includes the lands that front onto Sanatorium Road and/or Scenic Drive as well as the lands surrounding Chedoke Creek. The intensity, the building height, and compatibility of the development with the surrounding area remain issues for Area B.

There are four buildings proposed. Buildings L and N are located on opposite sides of Sanatorium Road at the intersection of Scenic Drive. Both buildings are proposed to be six-storey apartment buildings, with a step-back of 3 m at the fifth floor and an additional 3 m on the sixth floor. Both these buildings are the focus of the height and density dispute. Building M, in the interior of the site, is proposed to be six storeys in height, and Building O that fronts onto Scenic Drive is proposed to be a four-storey building.

The Long and Bisby building within Area B is a designated heritage building and it will be retained.

### 3. The ESA Woodlot

The large woodlot on the east portion of the site has been identified as an ESA. This woodlot, along with a buffer, will remain as private open space.

The section of Chedoke Creek and surrounding hazard lands to the west of Sanatorium Road will also be retained in private ownership. There will be additional SWM facilities for the development, but they will be privately owned and determined at a later date.

### **Planning context**

The proposal is required to conform to the relevant provisions of the Hamilton Wentworth Regional Plan. The lands are designated Urban in this plan, which is intended to accommodate the majority of settlement with a range of land uses.

The lands are designated major institutional in the in-force City OP, related to the previous use as a hospital. An official plan amendment (OPA) is required to re-designate the lands for residential purposes. The City has determined that the entirety of these lands should be part of the Chedmac Secondary Plan area, an objective of which is to provide a range of housing types with a range of affordability that provides for low- and medium-density housing.

The City's OP contains its own policy framework to implement that portion of the escarpment occurring within the city. These lands fall within Special Policy Area 1C that has the following criteria:

1. Minimize the further encroachment on the escarpment; and

2. All development is to be compatible with the visual and natural environment of the escarpment.

The new Hamilton Urban OP, though not yet approved, represents council's intent. Consistent with the in-force OP, the new Urban OP promotes and supports intensification and a full range of dwelling types and densities. The GRIDS study was undertaken by the City as a conformity exercise with the Growth Plan and was conducted as a high-level review. The subject area was identified as a location for intensification as it is a large institutional parcel in the GRIDS study.

### **Evidence and findings**

#### Unit yield, density and building height

The issue of most significance to the City, Mr. Wolker, and area residents, is the calculation of unit yield, density and building height related specifically to the two buildings at the corner of Scenic Drive and Sanatorium Road, being Buildings L and N, as shown on the site plan (Exhibit 5). These buildings are proposed to be six storeys, with step-backs on the fifth and sixth storeys that front onto Scenic Drive. The City and Mr. Wolker are opposed to the two additional storeys above four storeys and the additional 79 units, which corresponds to 529 units versus 450 units.

The site-specific OPA proposes a density that is broken down by number of units and by GFA. The mass is allocated by floor space, and is 20,000 m<sup>2</sup> on Block A with a maximum of 195 units, and 34,000 m<sup>2</sup> in Block B with a maximum of 335 units. The Applicant proposes a maximum number of 529 dwelling units.

The parties had much discussion and disagreement regarding the calculation of the number of residential dwelling units per hectare ("residential density") and whether the calculation should be "net" or "gross", with no clear definitions of either. Ms. Nott testified that it is her interpretation that net excludes the public lands and should also exclude the woodlot as it is an ESA; therefore, the portion of the road dedicated to the City and the woodlot is excluded in the calculation. The balance of the land (about 6.8 ha) is the land upon which the residential density is calculated. This includes the lands of Chedoke Creek, on the basis that these lands will be privately owned by the condominium development and will be an amenity feature enjoyed by the residents.

This approach was supported by the City planning staff during Ms. Nott's consultations with the City (Exhibit 11). The creek lands and any associated SWM facility will be protected and preserved in open space character, but will be privately owned and operated.

Under cross-examination, Ms. Nott testified that the residential density was calculated separately for Area A (195 units / 2.98 ha = 65 units per ha) and Area B (335 units / 3.87 ha = 86.5 units per ha); for Area B, the area in the calculation includes the lands around Chedoke Creek. Mr. Bennett took issue with the calculation of the residential density for Area B. Mr. Bennett regards the inclusion of the lands around Chedoke Creek as inappropriate. In his opinion, these lands are not an amenity and should not be included in the calculation. He notes that the lands cannot be developed as they are hazard lands. He supports his interpretation by noting that if the lands were publicly owned, then they would not be included in the calculation for residential density. If the lands are not included, then the calculation for the number of units per hectare is higher and falls within the high density category, which does not conform to the Secondary Plan. He recommends that the density be reduced and that all the buildings be limited to four storeys.

#### Intensity, compatibility and sensitivity

Mr. Bennett testified that along with his concern regarding the increase in density of the development in comparison to the surrounding lands, the City does not identify this as an area for intensification within the City. As such, there is no imperative to maximize density at this location. He opined that the proposed density is more intensive than the surrounding area and does not fit or achieve harmonious integration with the surrounding low density residential uses and moderate intensity institutional uses. Mr. Bennett testified that the growth strategy for the City is described in the GRIDS plan and that this plan identifies that growth should be at nodes and corridors. This site is not within such an area.

Dr. Colbert testified as a lay witness. His view, shared by many of the residents who spoke, was that the development is far too intense for the location. He felt that there should be far fewer units (only 175 units) in order to minimize the overall environmental impact on the area, both in terms of the building footprint and the number of people and cars that would be introduced to the area. He felt that the built form should conserve

the park-like character and the cultural heritage of the setting as a healing centre, preserve the maximum number of trees and green space, and adaptively re-use buildings wherever possible. He also noted that the area is not near main arterial roads, is not in an identified area for intensification, and the character of the surrounding neighbourhood is very low density and therefore, raises compatibility issues. He felt strongly that the new development should be a mix of residential and small local commercial uses to build an integrated, pedestrian friendly, sustainable community.

The Board's findings on height, density and intensity

The Board finds that the site is an appropriate location for the intensity proposed. The testimony of Ms. Nott has satisfied the Board that the location is appropriate for this form of development. The site is served by a defined road and the physical size is sufficiently large to allow for mitigation strategies to meet compatibility issues. The Board finds that the development is compatible with the surrounding neighbourhood, can function at the density proposed, and can exist in harmony with the surrounding low density uses. The following factors are relevant to this finding:

- The proposed planning documents are consistent with the City documents
- The development will contribute to a variety of housing types
- An obsolete site will be redeveloped
- There is a gradation of residential unit types proposed
- Apartments are concentrated across from SWM facilities and institutional uses and are buffered by the woodlot to the east
- Controls on massing will also control intensity of use
- The access through the site is consistent with existing access
- Cultural heritage is being maintained
- The intensity of the site can be met by the existing infrastructure and road capacity

- The development will contribute to city's intensification goals of 40%, therefore is consistent the with the intensification policies of the city

The Board finds that the intent of the Chedmac Secondary Plan for an appropriate gradation of density is achieved by this development. The Board is in agreement with Ms. Nott's opinion that the arrangement of the buildings on the site will ensure compatibility with the surrounding area. She testified that buffering will be achieved by building setback and landscaped open spaces and will not impact the low density residential uses. The Board agrees with Ms. Nott's opinion that the lands surrounding the creek will provide amenity space to the residents of the proposed development, and therefore, it is appropriate to include these in the calculation of units/hectare for the determination of the density of the development in Area B. As described by Ms. Nott, the lands where the creek is located are to be improved as set out in the arborist's report (Exhibit 31). These lands will be maintained by the condominium corporation and will be in private ownership. On this basis, the Board finds that the maximum number of dwelling units proposed (335 for Block B) does not exceed the maximum densities allocated for Area B. Area A is not in dispute.

The total number of units – 529 units to 6.8 ha – is equivalent to 78 units per ha and the Board finds this density is appropriate for medium density residential development. This conforms to the Chedmac Secondary Plan that indicates that the zoning for these areas is to be medium density. The potential for retirement lifestyle units on a 2:1 basis does not change the calculation of the determination of medium density.

The dispute regarding density is related to the proposed fifth and sixth floors in buildings L and N. These two buildings will have step-backs on the fifth and sixth floors at the front of the buildings that front onto Scenic Drive. The step-backs will mitigate the visual impact of the height and the mass of the buildings. The buildings are isolated from the low density, single family homes to the east and west that are more sensitive to impacts from apartment-style buildings. There are no identified adverse impacts with respect to privacy or overlook to the single family homes from the two, six-storey buildings. There is no issue with shadows, as shadows would fall on the site.

The Board finds that the impact of the fifth and sixth storeys is very limited, as these buildings are opposite a storm water pond and a four-storey building (the Columbia College residence). There will be no significant impacts to the surrounding area as a

result of these two buildings at the six-storey height. There is a six-storey building (M) that is integral to the development fronting on to Sanatorium Drive and there is no opposition to the height of this building.

For all these reasons, the Board finds that the proposal will result in an amenable mixture of densities and arrangement that will minimize conflicts between different forms of housing. There is no dispute with parking; there will be one access through Sanatorium Road, and therefore, there will be no alteration of traffic flows.

#### Conformity with NEP

Ms. Nott testified that it is her opinion that the proposal conforms to the relevant provisions of the NEP. Mr. Walker still expressed concern regarding conformity. Ms. Nott opined that the NEP is a provincial plan that is directly related to the physical landscape. The site is within a designated urban area and an objective of the plan is to minimize further urbanization, which is met by this proposal. The NEC is satisfied that the planning documents meet the Development Objectives of the NEP and that the continued consultation with the NEC, as expressed in the Minutes of Settlement, will ensure that the requirements of the NEP are met. It is Ms. Nott's opinion that the urban design can be made compatible through the implementation process and that the proposed uses would be in conformity with NEP. The Board agrees.

The Board finds that the planning documents conform to the NEP and the City policies that relate to the Niagara Escarpment. The Board accepts the opinion of Ms. Nott in this regard. The Board also accepts that with the agreement reached between the NEC and the Applicant, the objectives of the NEP are satisfied.

#### Landscaped open space

At issue for Mr. Wolker and the area residents is whether there is sufficient landscaped open space on Scenic Drive to maintain the open character. The Board finds that the plan which allows only town homes fronting onto Scenic Drive in Area A, with 50% open space to a depth of 25 m, provides sufficient open space to maintain the character of the area. The development will be on a distinct parcel, separated by Scenic Drive to the south, the brow to the north, and the woodlot to the east, with a connection to the low density area by Scenic Drive.

### Alternative development proposals

Both Dr. Colbert and Mr. Bennett presented alternative development proposals for the lands. It is evident that there are alternatives that could be contemplated for development of the lands. However, the matter before the Board is the conceptual plan as presented in Exhibit 5, which the Board finds to be appropriate and constitutes good planning. Ultimately, prior to development, a master site plan and precinct plans will be required to ensure compatibility with the OP and the surrounding neighbourhood and be to the satisfaction of the NEC.

### Natural and cultural heritage

With respect to natural and cultural heritage, Mr. Wolker expressed concern that the Norway maples along Scenic Drive be protected as they are an important part of the current visual landscape. The Board is satisfied that the requirement for a tree preservation plan to the satisfaction to the City will ensure appropriate protection of the trees. It is not likely that the trees will be impacted by the development, as there is an 8 m setback from the road right of way, and there are no driveways onto Scenic Drive from the development.

The Board is satisfied that significant natural areas have been identified and protected (such as the creek) and will continue to be protected during the ongoing development.

The proposal includes measures to re-use existing cultural heritage buildings on the site and measures to ensure that new development is compatible with the cultural heritage landscape that is comprised of curvilinear roads and open spaces.

### **Decision and order**

The Board finds that the development is consistent with the Provincial Policy Statement. The proposal is residential intensification that is appropriate and consistent with provincial policy. The Board finds that the proposal conforms to the relevant provisions of the Hamilton Wentworth Regional Plan and conforms to the in-force City of Hamilton Official Plan. As with the in-force OP, the new Urban OP, not yet in force, promotes and supports intensification and a full range of dwelling types and densities that is met by this proposal. The entirety of these lands is to be part of the Chedmac Secondary Plan



area and consistent with policies in that plan, a range of housing types with a range of affordability that provides for medium density housing is proposed.

The Board finds that the “Draft Plan of Subdivision – The Browlands”, prepared by A.J. Clarke and Associates Ltd., and certified by B.J. Clarke, OLS, dated March 26, 2009, comprising Part of Lot 57, Concession 2, Sanatorium Road and Scenic Drive, Hamilton, as set out in Exhibit 7, meets the criteria of 51(24) of the *Planning Act*.

Accordingly, the appeals are allowed, and the Board Orders as follows:

1. The Official Plan for the City of Hamilton is amended as set out in Exhibit 20, as modified, now Attachment “1” to this Order.
2. Zoning By-law 6593 is amended as set out in Exhibit 21, as modified, with the Explanatory notes as set out in Exhibit 22, now part of Attachment “2” to this Order.
3. Zoning By-law 05-200 is amended as set out in Exhibit 23, as modified, with the Explanatory note as set out in Exhibit 22, now part of Attachment “2” to this Order.
4. The draft plan prepared by A.J. Clarke and Associates Ltd. and certified by B.J. Clarke, OLS, dated March 26, 2009, comprising Part of Lot 57, Concession 2, Sanatorium Road and Scenic Drive, Hamilton, is approved subject to the fulfillment of the conditions set out in Attachment “3” to this Order, and subject to the Visual Impact Assessment set out in Attachment “4” to this Order.

Pursuant to subsection 51(56.1) of the *Planning Act*, the City of Hamilton shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Act*.

In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

So Orders the Board.

"H. Jackson"

H. JACKSON  
MEMBER

"K. H. Hussey"

K. H. HUSSEY  
VICE-CHAIR

ATTACHMENT 2 *Exhibit 22*

**ZONING BYLAW EXPLANATORY NOTE**

**Amendment to Zoning By-law No. 6593 (Hamilton):**

The purpose of the Zoning Bylaw Amendment is to rezone the subject lands so as to permit the development of the Subject Lands in accordance with the provisions of the proposed Official Plan Amendment, specifically to allow for the development of up to 529 residential units on the Subject Lands. The zoning by-law would allow for the development of townhouse dwellings, multiple dwellings and retirement dwellings and amenity uses accessory thereto. The zoning would also provide for mix of accessory and limited commercial uses, as well as live/work units.

The lands identified as Block 1 on the Bylaw Schedule shall contain restrictions which will limit the height of any proposed building to no more than 9.0m adjacent to Scenic Drive, while all other buildings shall have a height not to exceed 12.0m as defined in the Bylaw. The zoning bylaw permits the development of up to 195 residential dwelling units on Block 1 while establishing further requirements with respect to building massing, setbacks and landscape requirements.

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The lands identified as Block 2 on the Bylaw Schedule shall contain restrictions which will limit the height of any townhouse dwelling unit to no more than 3 storeys or 9.0m, while all other buildings shall have a height not to exceed 6 storeys or 18.0m as defined in the Bylaw. The zoning permits the development of up to 335 residential dwelling units on Block 2 while establishing further requirements with respect to building massing, setbacks and landscape requirements.

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The lands identified on Block 1 and Block 2 are subject to a Holding Provision, the removal of which requires the submission of a visual impact assessment as part of a Master Site Plan and Precinct Plan process, to the satisfaction of the Director of Planning, in consultation with the Niagara Escarpment Commission.

**Amendment to Zoning By-law No. 05-200**

The proposed zoning by-law amendment would zone the lands identified in the Schedule attached thereto as *Conservation/Hazard Lands (P5) Zone*. No residential units are proposed to be developed on these lands.

Exhibit 21

CITY OF HAMILTON  
BY-LAW NO. \_\_\_\_

To Amend Zoning By-law No. 6593 (Hamilton),  
Respecting Lands Located on the north side of Scenic Drive  
and east and west of Sanatorium Road

WHEREAS the Ontario Municipal Board by Order dated \_\_\_\_\_, 2011 approved an Amendment to the Official Plan of the former City of Hamilton;

AND WHEREAS this by-law will be in conformity with said Amendment to the Official Plan of the former City of Hamilton

NOW THEREFORE the Ontario Municipal Board directs that Zoning By-law No. 6593 (Hamilton) be amended as follows:

1. That Sheet No. W-36 of the District Maps appended to and forming part of Zoning By-law No. 6593 (Hamilton), as amended, is hereby further amended by changing the zoning from the "AA/S-1353" (Agricultural) District, Modified to the following districts:
  - (a) "DE-/S-1600" (Low Density Multiple Dwellings - Holding) District, Modified, on the lands shown as Block-1; and,
  - (b) "E-H/S-1600" (Multiple Dwellings, Lodges, Club, etc. - Holding) District, Modified, on the lands shown as Block 2; the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
2. For the purposes of this By-law the following definitions shall apply:

**Building Height:**

Shall mean the vertical distance from grade to the uppermost point of the building but not including any mechanical penthouse or any portion of a building designed, adapted or used for such features as a chimney, smokestack, fire wall, stair tower, fire tower, water tower, tank, elevator bulkhead, ventilator, skylight, cooling tower, derrick, conveyor, antenna, or any such requisite appurtenance, or a flagpole, display sign, ornamental figure, bell tower or other similar structure, except for townhouse dwellings, where building height shall mean the vertical distance from grade to the eaves. Provided, however, where this By-law requires building height to be calculated to determine a minimum rear yard or a minimum side yard requirement, building height shall mean the vertical distance between the lowest finished grade elevation along the lot line

related to such required yard at that point closest to the building and the horizontal extension of the uppermost point of the building.

**Retirement Dwelling Unit:**

Shall mean a dwelling unit in a multiple dwelling which does not contain a full kitchen but where the building provides communal facilities such as kitchen/dining facilities, laundry facilities, lounges and where the residents may be supervised in their daily living activities. A retirement dwelling unit may be licensed by the municipality and shall not be considered a long term care facility, emergency shelter, lodging house, residential care facility or any other facility which is licensed, approved or regulated under any general or special Act.

**Craftsperson Shop:**

Shall mean an establishment used for the creation, finishing, refinishing or similar production of custom or hand-made commodities, together with the retailing of such commodities.

**Personal Services:**

Shall mean the provision of services involving the health, beauty or grooming of a person or the maintenance or cleaning of apparel, but shall not include a Dry Cleaning Plant or a Body Rub Parlour.

**Studio:**

Shall mean an establishment used for the study or instruction of a performing or visual art, such as but not limited to, dancing, singing, acting or modeling, or the workplace with accessory retail, of a painter, sculptor or photographer, or an establishment used for the making or transmission of motion pictures, radio or television programs.

3. That the "DE" (Low Density Multiple Dwellings) District regulations, as contained in Section 10A of Zoning By-law No. 6593, applicable to Block "1" are modified to include the following special requirements:

- (a) Notwithstanding Subsection 10A (1) of Zoning By-law No. 6593, only the following uses shall be permitted:
  - i. Townhouse dwellings;
  - ii. Multiple dwellings;
  - iii. Retirement dwelling units and amenity uses accessory thereto;
  - iv. Accessory uses only on the ground floor of a multiple dwelling and within any building existing on the date of the

Ontario Municipal Board approval of this by-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2011, limited to the following: Office; Craftsperson Shop; Personal Services; Medical Office; Home Occupation; Day Nursery; Studio; and, a Retail Store provided that the total floor area does not exceed 200 square metres; and,

- v. Commercial uses only within the buildings existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2011, known as the "Moreland" and "Brow Annex" buildings limited to: Art Gallery; Artist Studio; Craftsperson Shop; Business or Professional Office; Personal Services; Retail Store, excluding a Convenience Store, not to exceed 200 square metres; Day Nursery; Library; Museum; Community Centre; Lecture Room; Restaurant, not to exceed 200 square metres; and Medical Office.

Alternatively, dwelling units shall be permitted within the existing buildings and such dwelling units shall not be considered as part of the maximum number of dwelling units set out in Section 3(b)xiii herein.

- vi. Live/work units including a dwelling unit only within a townhouse unit a minimum distance of 25 metres from Scenic Drive or building containing multiple dwellings, with one of the following uses, provided the non-residential use does not exceed 50% of the floor area: Personal Services; Craftsperson Shop; Artists' or Photographers' Studio; or Business or Professional Office.

(b) Notwithstanding Subsections 10A (2), (3), (4) and (5) of Zoning By-law No. 6593, the following provisions shall apply:

- i. No building or structure adjacent to Scenic Drive shall exceed 9 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this By-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2011. All other buildings and structures shall not exceed a height of 12 metres from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

- ii. Townhouse dwellings shall be the only permitted residential uses within 30 metres of Scenic Drive. A minimum of 50 percent of the frontage along Scenic Drive shall be

along  
Scenic  
Drive

~~maintained as landscaped open space to a minimum depth of 25 metres (except where buildings and structures are permitted). For purposes of this requirement, the frontage will be as measured along the limits of the zone boundary for Block 1 and the determination of the 50 percent of the frontage along Scenic Drive shall include the width of the lands associated with the required setback between each continuous row of townhouse dwellings, provided such area is maintained as landscaped open space.~~

- iii. That no new buildings or structures shall be permitted within a minimum setback of 30 metres to the staked limit of the brow of the Niagara Escarpment;
- iv. That existing building B-1 (Brow Infirmary) as shown on Schedule A may be enlarged or replaced in whole or in part, provided no part of any new construction shall be within the 30 metre setback provided for under paragraph b) ii) or within the area between the façade of the existing building B-1 facing the escarpment and the staked brow of the escarpment;
- v. That no buildings or structures (excluding fences, gates and similar landscape features) shall be permitted within 8 metres of the lot line along Scenic Drive;
- vi. That a minimum setback of 50 metres shall be provided and maintained from the intersection of the westerly property limit along Scenic Drive and the staked limit of the brow;
- vii. That a minimum setback of 12 metres shall be provided between multiple dwellings;
- viii. That a minimum setback of 5 metres shall be provided between each continuous row of townhouse dwellings;
- ix. That not more than 4 townhouse dwelling units shall be attached in a continuous row;
- x. That a minimum setback of 5 metres shall be provided and maintained to any private driveway, laneway or private road;
- xi. That a minimum of 30% of the lot area shall be provided and maintained as landscaped area;

- xii. That a maximum of 10% of the required parking may be surface parking;
  - xiii. That a maximum of 195 residential dwelling units shall be permitted, not including dwelling units provided within any building existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_ day of \_\_\_, 2011; Deleted: 180
  - xiv. That the maximum gross floor area shall not exceed 20,000 square metres for all residential units; Deleted: 19
  - xv. That direct vehicular access to townhouse dwellings shall be prohibited from Scenic Drive.
4. That the "E" (Multiple Dwellings, Lodges, Club, etc.) District regulations, as contained in Section 11 of Zoning By-law No. 6593, applicable to Block "2" are modified to include the following special requirements:
- (a) Notwithstanding Subsection 11 (1) of Zoning By-law No. 6593, only the following uses shall be permitted and only in conjunction with the building existing on the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_ day of \_\_\_, 2011, known as the "Long and Bisby" Building:
    - i. Townhouse dwellings;
    - ii. Multiple dwellings;
    - iii. Retirement dwelling units and amenity uses accessory thereto;
    - iv. Accessory uses only on the ground floor of a multiple dwelling and within any building existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_ day of \_\_\_, 2011, limited to the following: Office; Craftsperson Shop; Personal Services; Medical Office; Home Occupation; Day Nursery; Studio; and, a Retail Store provided that the total floor area does not exceed 200 square metres;
    - v. Commercial uses only within the building existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_ day of \_\_\_, 2011, known as the "Long and Bisby" Building limited to: Art Gallery; Artist Studio; Craftsperson Shop; Business or Professional Office; Personal Services; Retail Store, excluding a Convenience



Store, not to exceed 200 square metres; Day Nursery; Library; Museum; Community Centre; Lecture Room; Restaurant, not to exceed 200 square metres; and Medical Office.

Alternatively, a maximum of 12 dwelling units shall be permitted within the existing building and such dwelling units shall not be considered as part of the maximum number of dwelling units set out in Section 4b)xlii herein.

- vi. Live/work units including a dwelling unit only within a townhouse unit with one of the following uses provided the non-residential use does not exceed 50% of the floor area: Personal Services; Craftsperson Shop; Artists' or Photographers' Studio; Business or Professional Office or Medical Office.
- (b) Notwithstanding Subsections 11 (2), (3), (4), (5) and (6) of Zoning By-law No. 6593, the following provisions shall apply:
- i. That no building for a townhouse dwelling shall exceed 3 storeys or 9 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011;
  - ii. That no building containing multiple dwellings or retirement dwellings units shall exceed 6 storeys or 18 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011;
  - iii. That no building containing multiple dwellings or retirement dwellings units shall exceed 4 storeys or 12 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011 where any portion of such building is located within 50 metres of a single-family lot;
  - iv. That a minimum setback of 8 metres shall be provided and maintained from the lot line abutting Scenic Drive;
  - v. That a minimum setback of 12 metres shall be provided and maintained between multiple dwellings up to 4 storeys in height;

- vi. That a minimum setback of 20 metres shall be provided and maintained between multiple dwellings 5 storeys or more in height;
  - vii. That a minimum setback of 5 metres shall be provided and maintained to all other Zone district boundaries
  - viii. That not more than 4 townhouse dwelling units shall be attached in a continuous row;
  - ix. That a minimum setback of 5 metres shall be provided and maintained between townhouse dwellings;
  - x. That a minimum of 30% of the lot area shall be provided and maintained as landscaped area;
  - xi. That a maximum of 10% of the required parking may be surface parking;
  - xii. That a maximum of ~~335~~ residential dwelling units are permitted; Deleted: 50
  - xiii. That a maximum of ~~34,000~~ square metres of gross floor area shall be permitted for all residential units; Deleted: 5
  - xiv. For buildings other than townhouses abutting on Scenic Drive, the maximum building façade width, measured at the most easterly to the most westerly point of the building, shall not exceed 53 metres;
  - xv. For buildings greater than 4 storeys and 12 metres in height, those portions of the building at the 5<sup>th</sup> and 6<sup>th</sup> storey which abut Scenic Drive shall be setback a minimum of 3 metres from the storey below at each of the 5<sup>th</sup> and 6<sup>th</sup> storey;
  - xvi. That direct vehicular access to townhouse dwellings shall be prohibited from Scenic Drive.
5. That in addition to the requirements of Sections 3 and 4 above, the following provisions shall also apply:
- (a) That notwithstanding the provisions of Sections 3. (b) xiv and 4. (b) xiii above, the total gross floor area for residential uses shall not exceed ~~54,000~~ square metres, excluding any residential use of the existing buildings that are retained or reconstructed. Deleted: 1,000

- (b) That notwithstanding the provisions of Section 3. (b) xiii and 4.(b) xii above, a maximum of 100 dwelling units may be allocated for up to 200 retirement dwelling units at a ratio of 1:2 for a total of 629 units. Additional dwelling units may also be allocated to retirement dwelling units at a ratio of 1:1 providing the total number does not exceed 629.
  - (c) That the provisions of Sections 3. (b) xiii and 4 (b) xii, above, shall exclude any dwelling units that may be contained in the buildings existing on the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011, known as the "Long and Bisby" Building, the "Moreland" Building, the "Brow Annex" and the "Brow Infirmary" Building.
6. That the 'H' symbol shall be removed for all, or a portion of the lands affected by this By-law, by a further amendment to this By-law, at such time:
- (a) The applicant submits a Master Site Plan and Precinct Plan for each development phase, as set out in Official Plan Amendment No. xx, which includes the required studies, to the satisfaction of the Director of Planning.
  - (b) The applicant submits urban design guidelines, as set out in Official Plan Amendment No. xx, to the satisfaction of the Director of Planning.
  - (c) The applicant submits architectural control guidelines, as set out in Official Plan Amendment No. xx, to the satisfaction of the Director of Planning.
  - (d) The applicant submits an Urban Design Report, as set out in Official Plan Amendment No. xx, to the satisfaction of the Director of Planning.
  - (e) Where the Moreland and Brow Annex buildings are not to be retained, the applicant submits a report which demonstrates that retention and re-use of such buildings is not structurally feasible, to the satisfaction of the Director of Planning.



This is Schedule "A" to By-Law No.11-

Passed the ..... day of ....., 2011

### Schedule "A"

Map Forming Part of  
By-Law No. 11- \_\_\_\_\_

to Amend By-law No. 6593

#### Subject Property

North side of Scenic Drive, east and west of Sanatorium Road.

Change in Zoning from the "AA/S-1353" (Agricultural)  
District, Modified to:



Block 1: "DE/S-1600" (Low Density Multiple  
Dwellings - Holding)



Block 2: "E-H/S-1600"  
Multiple Dwellings, Lodge, Clubs, etc. - Holding  
District, Modified.



Refer to By-law 05-200.



Old Sanatorium Road