

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

16-073
Attachment 1

16-074
Attachment 2



ISSUE DATE: February 3, 2016

CASE NO(S): PL140892

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Flamborough Power Centre Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Hamilton to adopt the requested amendment
Existing Designation:	Prestige Industrial – Commercial and General Industrial - Commercial
Proposed Designation:	Site Specific to allow for the proposed expansion
Purpose:	To permit the expansion of retail and service commercial space
Property Address/Description:	Highway 6 and Highway 5/Dundas Street
Municipality:	City of Hamilton
Approval Authority File No.:	OPA-13-013
OMB Case No.:	PL140892
OMB File No.:	PL140893
OMB Case Name:	Flamborough Power Centre Inc. v. Hamilton (City)

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

Applicant and Appellant:	Flamborough Power Centre Inc.
Subject:	Application to amend Zoning By-law Nos. 03-0332, 05-021, 11-289 and 09-054 – Neglect of application by the City of Hamilton
Existing Zoning:	M1-1, M1-11-1, M1-H-2, M1-11(H), M1-12-1, M1-12-2(H), M1-12-3(H), M1-13
Proposed Zoning:	Site Specific to allow for the proposed expansion
Purpose:	To permit the expansion of retail and service commercial space
Property Address/Description:	Highway 6 and Highway 5/Dundas Street
Municipality:	City of Hamilton

Municipal File No.: ZAC-13-045
OMB Case No.: PL140892
OMB File No.: PL140893

BEFORE:

J. ZUIDEMA) Tuesday, the 2nd
VICE-CHAIR)
) day of February, 2016

THIS MATTER having come before the Board on March 16, 2015 with a Decision being issued on April 10, 2015 and a settlement hearing having been heard July 9, 2015 with a Decision being issued on November 6, 2015 ("Decisions");

AND THE BOARD having withheld its final Order until the parties confirmed that an agreement had been fully executed and registered on title;

AND THE BOARD having now received confirmation that an agreement has been registered on title along with a supplemental Affidavit of Ed Fothergill which has been included in the record;

THE BOARD ORDERS that the appeal is allowed, and the Official Plan for the City of Hamilton is amended as set out in Attachment 1 to this Order, and as amended is approved;

AND THE BOARD ORDERS that the appeal is allowed and the municipality is directed to amend By-law 90-145-Z (Flamborough) as amended by By-law Nos. 03-0332, 05-021, 09-054 and 11-289 as set out in Attachment 2 to this Order.

A handwritten signature in black ink, appearing to read "Jenne Hagg". The signature is fluid and cursive, with a large initial "J" and a stylized "H".

SECRETARY

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

ATTACHMENT 1

Urban Hamilton Official Plan Amendment No. 75

The following text constitutes Official Plan Amendment No. 75 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to amend the policies of Flamborough Area Specific Policy UF-1 to establish consistent policies for lands designated "District Commercial" within the Flamborough Power Centre and to increase the overall permitted Gross Floor Area of commercial uses in an appropriately distributed manner amongst the subject lands.

2.0 Location:

The lands affected by this Amendment are located east of Highway 6, west of the pipeline easement, north of the Niagara Escarpment, and south of Borer's Creek.

3.0 Basis:

The basis for permitting this Amendment is as follows:

- It provides for the same permitted uses across the majority of the Area; and,
- It permits a wider range of unit sizes to enhance the commercial viability of this District Commercial Area.

4.0 Actual Changes:

4.1 Text Changes:

Volume 3 – Urban Area Specific Policies

4.1.1 Volume 3 – Chapter B – Flamborough Area Specific Policies, is amended by:

- a) Deleting reference to Area D in Policy 1.0;
- b) Replacing in Policy 1.0(a) reference to 118,354 square metres of gross floor area with 139,000 square metres;
- c) Renumbering Policy 1.4 to Policy 1.6; and,

- d) Deleting the text of Policy 1.1, 1.2, 1.3, and 1.4 and replacing it with the following new policies:

"Area A, B-I, B-2 and C

1.1 In addition to Policy E.4.7.2 but notwithstanding Policies E.4.7.3 and E.4.7.7 - District Commercial of Volume 1, the lands west of the pipeline easement on the north and south side of Dundas Street East, shown as Areas A, B-I, B-2 and C on Area Specific UF-1 on Map F-I, shall be subject to the following policies:

- a) The following additional uses shall be permitted:
 - i) Hotel/motel;
 - ii) Government service buildings such as fire halls and ambulance stations;
 - iii) Recreational and entertainment facilities;
 - iv) Wholesale and/or retail warehouses;
 - v) Home improvement, household furniture and/or appliance outlet and/or lawn and garden centres;
 - vi) Department store;
 - vii) Business, professional, and administrative offices in stand-alone buildings; and,
 - viii) Mini-storage within a wholly enclosed building(s) with no associated outdoor storage permitted.
- b) Areas A, B-I, B-2 and C shall be developed in accordance with the following policies:
 - i) A 'gateway' feature shall be required to establish the site as a focal point to one of the major entrances to the Waterdown urban area;
 - ii) Enhanced landscaping and tree plantings shall be required especially as the site relates to Highway 5 and 6 and the internal road pattern;

- iii) Development must ensure adequate traffic infrastructure both on the site and at the access points; and development shall be phased-in accordingly with road improvements; and,
- iv) As part of the staging of development, all required transportation improvements must be secured to properly service the extent of development permitted by the implementing Zoning By-law.

Area A

1.2 In addition to Policy 1.1, the following Policies shall also apply to Area A:

- a) That notwithstanding Policy E.4.7.7, the maximum total combined gross floor area of all uses excluding hotel/motel, community centre and public uses shall be 7,000 square metres; and,
- b) Buffering and screening of the site relative to the lands to the south shall be required. Consideration shall be required to identify and provide for a suitable barrier or fence to prevent trespassing on lands to the south.

Area B-1

1.3 In addition to Policy 1.1, the following Policies shall also apply to Area B-1:

- a) That notwithstanding Policy E.4.7.7, the maximum total combined gross floor area of all uses excluding hotel/motel, community centre and public uses shall be 31,000 square metres; and,
- b) Buffering and screening of the site relative to the lands to the south shall be required. Consideration shall be required to identify and provide for a suitable barrier or fence to prevent trespassing on lands to the south.

Area B-2

1.4 In addition to Policy 1.1, the following Policies shall also apply to Area B-2:

- a) That notwithstanding Policy F.4.7.7, the maximum total combined gross floor area of all uses excluding hotel/motel, community centre and public uses shall be 30,000 square metres; and,
- b) Buffering and screening of the site relative to the lands to the south shall be required.
Consideration shall be required to identify and provide for a suitable barrier or fence to prevent trespassing on lands to the south.

Area C

1.5 In addition to Policy 1.1, the following Policies shall also apply to Area C:

- a) That notwithstanding Policy E.4.7.7, the maximum total combined gross floor area of all uses excluding hotel/motel, community centre and public uses shall be 71,000 square metres; and,
- b) Retail uses exceeding a combined gross floor area of 71,000 square metres shall require a market impact study, to the satisfaction of the City, to ensure that there are no significant detrimental impacts on other planned commercial functions within the City. An Official Plan Amendment shall be required to increase the gross floor area cap above 71,000 square metres."

5.0 Implementation:

An implementing Zoning By-Law Amendment will give effect to this Amendment.

This Official Plan Amendment is Schedule "1" to By-law No.16-073, pursuant to Decision/Order of the Ontario Municipal Board issued in Case No. PL140892.

ATTACHMENT 2

CITY OF HAMILTON

BY-LAW NO. 15-____

To Amend Zoning By-law No. 90-145-Z (Flamborough) as amended by By-law Nos. 03-332, 05-021, 09-054 and 11-289, respecting lands described as being within Part of Lots 11, 12 and 13, Concession 3 (East Flamborough), in the former Town of Flamborough, now in the City of Hamilton

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 area municipality known as "The Corporation of the Town of Flamborough" 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 Zoning By-law No. 90-145-Z (Flamborough) was enacted on the 5th day of November, 1990, and approved by the Ontario Municipal Board on the 21st day of December, 1992;

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan upon approval of Official Plan Amendment No. _____.

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

1. That Schedule "A-29", appended to and forming part of By-law No. 90-145-Z (Flamborough), be amended as follows:
 1. Schedule No. A-29, attached to and forming part of Zoning By-law No. 90-145-Z, as amended by By-law Nos. 03-332, 05-021, 09-054, and 11-289, is hereby further amended by changing the zoning from the Prestige

Industrial - Holding "M1-11(H)" Zone, the Prestige Industrial - Holding "M1-11-1" and "M1-11-2(H)" Zones, the Prestige Industrial - Holding "M1-12-1(H)", "M1-12-2(H)" and "M1-12-3(H) Zones and the Prestige Industrial "M1-13" Zone, to the Prestige Industrial - Holding 'M1-14(H)' Zone on those lands being Part of Lots 11, 12 and 13, Concession 3 (Geographic Township of East Flamborough), being in the City of Hamilton, including Blocks 1, 2, 3, 4 and 5, shown on Schedule 'A' attached to and forming part of this By-law.

2. Section 29 - Prestige Industrial 'M1' Zone of Zoning By-law No. 90-145-Z (Flamborough) is hereby amended by adding thereto the following subsection:

"29.3.14 'M1-14' (see Schedule A-29)

(a) PERMITTED USES

Animal Hospital
 Automotive Convenience Centre
 Automobile Service Station subject to Section 21.2
 Business, Professional or Administrative Office
 Car Wash
 Commercial School
 Community Centre
 Computer, Electronic or Data Processing Establishment
 Convenience Retail Store
 Daycare Centre
 Dry Cleaning Establishment
 Dry Cleaning Distribution Station
 Exhibition Conference Hall
 Financial Institution
 Funeral Home
 Gas Bar subject to Section 21.2
 Hotel
 Industrial Research and Development Establishment
 Medical Clinic
 Mini-Storage with a wholly enclosed building(s) with no associated outdoor storage permitted
 Motel
 Outdoor Storage Areas associated with a Garden Centre and a Home Improvement/Building Supplies Establishment
 Personal Service Establishment
 Place of Entertainment
 Place of Recreation
 Printing or Publishing Establishment
 Public Use
 Restaurant - standard, convenience or fast food

Retail Establishment
 Video Rental Establishment
 Warehouse Membership Club
 Wholesale and Retail Warehouse Facility

(b) ZONE PROVISIONS

- (i) Minimum Lot Frontage.....30 metres
- (ii) Minimum Lot Area - Restaurant.....1,240 square metres
- (iii) Minimum Lot Area – All Other Uses 1,500 square metres
- (iv) Maximum Lot Coverage..... 30% except a lot with only Business, Professional or Administrative Office which shall be permitted a maximum lot coverage of 50%
- (v) Yard abutting a streetline other than a Provincial Highway (minimum).....3m
- (vi) Yard abutting a Provincial Highway.....14.0 metres (minimum)
- (vii) Interior Side Yard (minimum)..... 3.0 metres (15m where abutting any Open Space or Conservation Management Zone within By-law 05-200 or By-law 90-45-Z)
- (viii) Rear yard not abutting a streetline or Provincial Highway (minimum)..... 6 metres
- (ix) Planting Strip (minimum).....6.0 metres width across all lot lines abutting a street except 3.0 metres where a building is located adjacent to a street. Applicable only to Block

2 on Schedule 'A' of this By-law, a transformer is permitted to be located within the required planting strip

- (x) Notwithstanding the Zone Provisions above, a minimum 15 metre by 15 metre landscaped triangle shall be provided and maintained for corner lots with one streetline on Dundas Street East, and a minimum 12 metre by 12 metre landscaped triangle shall be provided and maintained for corner lots in all other cases, which shall be suitably landscaped and designed to provide an attractive appearance. The required 15 by 15 metre landscaped triangle shall also include a gateway feature which shall be defined through site plan approval.
- (xi) Maximum Total Gross Floor Area for
all uses excluding Motel, Hotel
Community Centre and Public Use
Blocks 1 and 2 Combined..... 71,000 square metres
- Maximum Total Gross Floor Area for
all uses excluding Motel, Hotel
Community Centre and Public Use
Block 3..... 7,000 square metres
- Maximum Total Gross Floor Area for
all uses excluding Motel, Hotel
Community Centre and Public Use
Block 4..... 30,000 square metres
- Maximum Total Gross Floor Area for
all uses excluding Motel, Hotel
Community Centre and Public Use
Block 5 31,000 square metres
- (xii) Each use other than accessory uses shall be contained in a building having all of its customer access doors opening directly outdoors and shall not open onto another store or an unenclosed corridor.
- (xiii) Notwithstanding the provisions of Section 5.21, PARKING REGULATIONS, which shall apply only to Motel, Hotel, Community Centre, Exhibition Conference Hall and Public Use; the minimum number of parking spaces to be provided and maintained for all other

uses shall be five (5) spaces per 100 square metres of Gross Floor Area except one (1) space per 30 square metres of Gross Floor Area shall be provided and maintained for Block 2 on Schedule 'A' to this By-law.

- (xiv) That applicable to Block 2 only on Schedule 'A' to this By-law, that notwithstanding the provisions of Section 5.13, LOADING REGULATIONS, for a building or structure with a Total Floor Area of over 7,000 square metres, 3 loading spaces shall be provided and maintained, and that loading spaces are permitted to be located within an exterior side yard.
- (xv) That applicable only to Block 2 on Schedule 'A' to this By-law, that notwithstanding the provisions of Section 5.20, OPEN STORAGE, refuse containers are permitted to be located in an exterior side yard.
- (xvi) For the purposes of this By-law, a "Warehouse Membership Club" shall be defined as a building with a minimum Gross Floor Area of 7,000 square metres, occupied by a single user, where the principal use is the sale of food and non-food products which are generally stored, displayed and offered for sale in one and the same area in a warehouse format and where customers, whether retail or wholesale, are generally required to be members of the club, but excludes department stores and supermarkets.
- (xvii) For the purposes of this By-law an AUTOMOTIVE CONVENIENCE CENTRE shall mean a single building, containing more than one individual outlet, with a minimum Gross Floor Area of 465 square metres and a maximum Gross Floor Area of 1,050 square metres and which contains a gas bar and/or car wash on the same lot and which building is designed, developed and maintained by the owner of the lot and the use of which may include a combination of individual outlets which may include a maximum of 1 convenience retail outlet and a maximum of 2 restaurants (including standard, convenience and fast food), regardless of whether such outlets are separately leased and have customer access from inside or outside the AUTOMOTIVE CONVENIENCE CENTRE.
- (xviii) All outdoor storage areas, including a garden centre and a home improvement/building supplies area, shall be permitted provided that they are screened from view.
- (xix) For lands located within Blocks 3, 4 and 5, only one Mini-Storage use shall be permitted and only if setback a minimum of 150m from both Highway No. 5 (Dundas Street East) and from Highway No. 6. For lands located within Blocks 1 and 2, only one Mini-Storage use shall

be permitted and only if setback a minimum of 150m from Highway No. 5 (Dundas Street East) and setback a minimum of 100m from Highway No. 6.

- (xx) All other provisions of Subsection 29.2 ('M1' Zone) shall apply except where modified by the above noted provisions.

(c) HOLDING PROVISIONS

The Holding provisions of Section 36(1) of the *Planning Act, R.S.O., 1990*, as amended, apply to lands within Blocks 1, 2 and 5 by introducing an "H" as a suffix to the proposed site specific Prestige Industrial zoning.

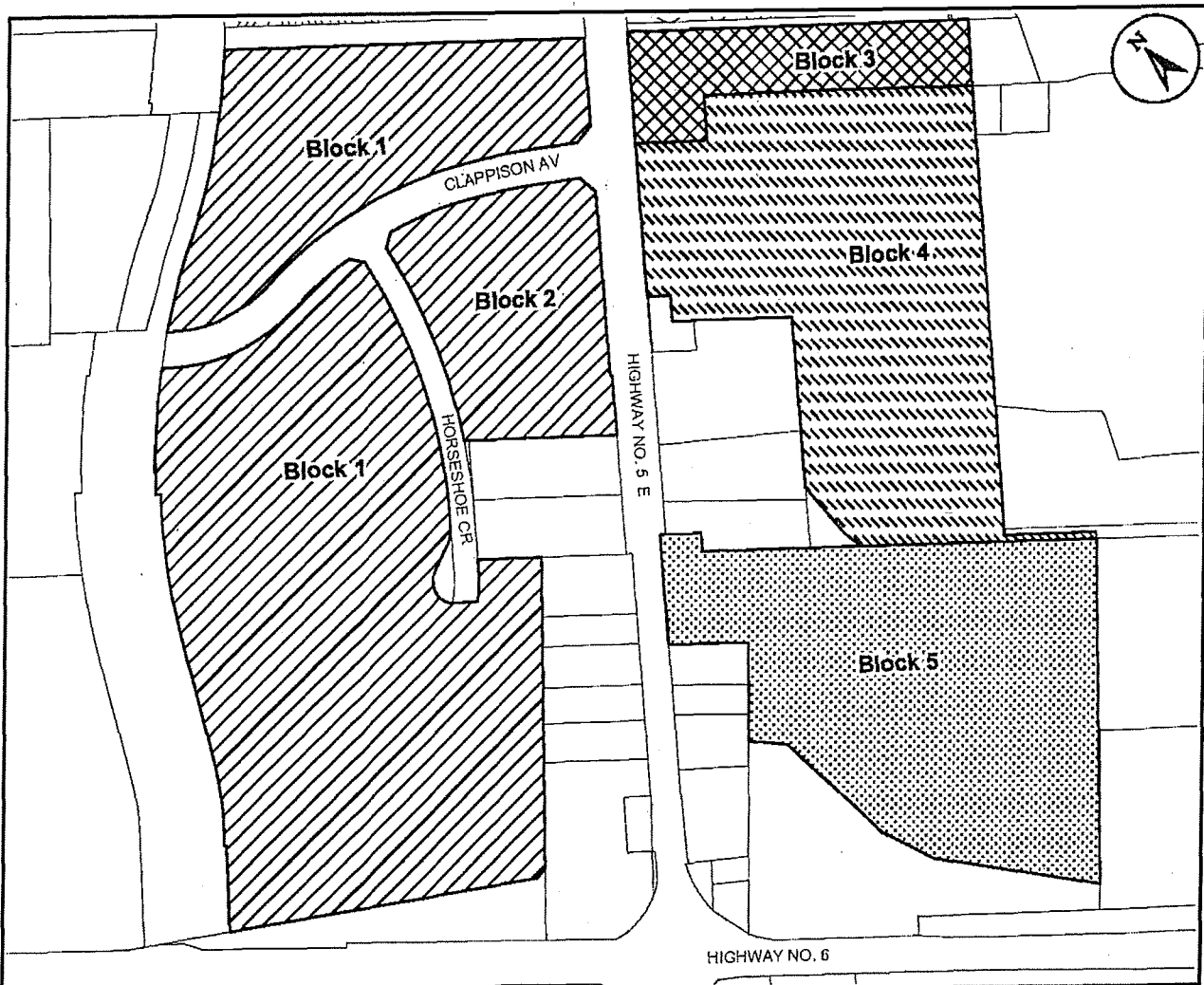
- (i) The Holding Provision 'M1-14-1' will prohibit development beyond 55,740 sq.m. of gross floor area for all uses within Blocks 1 and 2 excluding motel, hotel, community centre and public uses until such time as arrangements, financial or otherwise, are made for a road connection to Parkside Drive to the satisfaction of the Director of Planning and Chief Planner.
- (ii) The Holding Provision "M1-14-2" will prohibit the use of the subject lands for the proposed purposes as it affects Block 5 until such time that a municipal road allowance connecting the subject lands to Dundas Street East (Hwy. No. 5) has been dedicated to the City of Hamilton by way of a plan of subdivision to provide appropriate access to the subject lands, to the satisfaction of the Director of Planning and Chief Planner;

City Council may remove the 'H' symbol and, thereby, give effect to the Site Specific Prestige Industrial "M1-14" Zone provisions by enactment of an amending By-law once the conditions are fulfilled for each of Blocks 1, 2 and 5.

PASSED and ENACTED this ___ day of _____, 2015.

F. Eisenberger
MAYOR

R. Caterini
CLERK



This is Schedule "A" to By-law No. 15-

Passed the day of, 2015

Mayor

Clerk

Schedule "A"

Map Forming Part of
By-law No. 15-_____

to Amend By-law No. 90-145-Z

Subject Property



Block 1 & 2 - Change in Zoning from the Prestige Industrial - Holding "M1-12-1", "M1-12-2" and "M1-12-3(H)" Zone to the Prestige Industrial - Holding "M1-14(H)" Zone



Block 3 - Change in Zoning from the Prestige Industrial "M1-13" Zone to the Prestige Industrial - Holding "M1-14(H)" Zone



Block 4 - Change in Zoning from the Prestige Industrial - Holding "M1-11-1" and "M1-11-2(H)" Zone to the Prestige Industrial - Holding "M1-14(H)" Zone



Block 5 - Change in Zoning from the Prestige Industrial - Holding "M1-11-(H)" Zone to the Prestige Industrial - Holding "M1-14(H)" Zone

Scale:
N.T.S.

File Name/Number:
ZAC-13-045/OPA-13-011

Date:
June 11, 2015

Planner/Technician:
GM/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT