

ISSUE DATE:
Sept. 27, 2007
DECISION/ORDER NO:
2593



Clare

PL070386

07-296

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Hamilton Metal Trading Corp and Aberdeen Holdings Inc.
Appellant: The Gore District Land Trustee Corporation on behalf of The Gore District Land Trust
Appellant: Lafarge Canada Inc.
Subject: Proposed Official Plan Amendment No. 210
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: O070052

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

Appellant: Hamilton Metal Trading Corp and Aberdeen Holdings Inc.
Appellant: Lafarge Canada Inc.
Subject: By-law No. 07-043
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: R070071

APPEARANCES:

Parties

Counsel*/Agent

Hamilton Metal Trading Corporation,
Aberdeen (Hamilton) Holdings Inc., Trinity
Properties Investments Inc.

J. Farber

Lafarge Canada Inc.

W. Fairbrother

The Gore District Land Trustee Corporation
(McMaster Innovation Park)

R. Bocock

City of Hamilton

N. Smith

DECISION DELIVERED BY E. PENDERGRAST AND M.A. SILLS AND ORDER OF THE BOARD

On September 11, 2007, the Board held a pre-hearing conference (PHC) to prepare for a hearing of appeals against a proposed Secondary Plan for the West

Hamilton Innovative District (OPA No. 210) and a proposed implementing zoning by-law (By-law No. 07-043).

The procedural order issuing from the PHC is the subject of a separate Board Decision and Order. The subject of this Decision and Order is a transitional uses by-law (the Transitional Uses By-law) that was presented to the Board, with supporting planning evidence, during the course of the PHC. Initially, Lafarge Canada Ltd. had some concerns with the By-law, but these were resolved by minor revisions before it was presented to the Board. In addition to all parties, the four participants recognized at the PHC also support the By-law.

The planning evidence in support of the By-law was provided by Al Fletcher, a Registered Professional Planner and Senior Project Manager with Hamilton's Development and Real Estate Division. The Board qualified Mr. Fletcher to give opinion evidence in land use planning.

Background

The West Hamilton Innovative District (WHID) is an older industrial area of approximately 133 acres, located east of Highway 403, west of Dundurn Street South, south Main Street West and north of Aberdeen Avenue. The City's objective is to see the area converted over time into a prestige research and development district. The proposed Secondary Plan establishes policies to promote this objective, and By-law No. 07-043 introduces a new M1 zoning category to replace the existing K (Heavy Industry) zoning in order to accommodate the kinds of uses the City hopes the area will attract.

The Secondary Plan and By-law recognize that the desired transformation will occur over time, and that there is therefore a need to provide for the transitional use of existing buildings until these are redeveloped for purposes more in keeping with the City's vision. Specifically, By-law 07-043 permits manufacturing, motor vehicle service station, repair service and warehouse uses within the WHID that otherwise would not be permitted by the new M1 zoning, provided that these uses are located within existing buildings.

Interim Control By-law and Proposed Transitional Uses By-law

The WHID area was the subject of Interim Control By-law 05-041, which was enacted in February 2005 for one year, at which time it was extended for a second year as Interim Control By-law No. 06-028. In accordance with subsection 38(6.1) of the *Planning Act*, Interim Control By-law No. 06-028 remains in effect because By-law 07-043 was enacted during the time period established in the Interim Control By-law, but was appealed. As a result, uses continue to be restricted to the existing uses permitted by the Interim Control By-law, a situation which creates hardships for the owners of tenanted buildings, since it is difficult to replace tenants once they leave with new tenants who conform to the Interim Control By-law use restrictions.

In order to address this issue, the City has proposed a Transitional Uses By-law that permits the transitional uses identified in By-law No. 07-043. The proposed Transitional Uses By-law also prohibits the same uses prohibited by By-law 07-043, including heavier industrial uses and outdoor storage. The Transitional Uses By-law amends By-law No. 05-200, the new comprehensive zoning by-law for the amalgamated City of Hamilton, which is being enacted and is coming into force in stages.

The City does not propose to repeal the Interim Control By-law, but rather to have it remain in effect together with the Transitional Uses By-law, an approach that the Board confirmed was satisfactory to all counsel at the PHC. The proposed Transitional Uses By-law is attached as Attachment 1.

Planning Evidence and Board Decision

According to Mr. Fletcher, the proposed Transitional Uses By-law conforms to the existing Official Plan, and represents good planning for the area, both in terms of the light industrial uses it permits and the heavier industrial uses that it prohibits. In his opinion, the By-law is appropriate and reasonable in that it allows existing property owners to use their existing buildings for uses compatible with those buildings, without the delay involved in dealing with the appeals to the WHID Secondary Plan and implementing zoning. Its enactment is also consistent with the City's recognition that its vision for the WHID area will be realized over time, and that during this time it is desirable for existing buildings to be used.

The Board also notes that the participants support the Transitional Uses By-law, and that Mr. Fletcher's evidence was unopposed.

Based on Mr. Fletcher's uncontested planning evidence, the Board will approve the Transitional Uses By-law, which is appended to this Decision/Order as Attachment 1. The Board also authorizes the City Clerk to assign a number to the attached Transitional Uses By-law for record-keeping purposes.

Because there were no appeals to the transitional use provisions of By-law No. 07-043, which are the same provisions as those contained in the Transitional Uses By-law, the Board, in accordance with subsection 34(31) of the *Planning Act*, directs that the Transitional Uses By-law will come into effect on the day that By-law 07-043 was passed.

Order

The Board orders that By-law No. 05-200 is amended in accordance with the draft by-law appended hereto as Attachment 1, that the amending by-law will come into force on the date that By-law No. 07-043 was passed and that the City Clerk is authorized to assign a number to the amending by-law for record-keeping purposes.

"E. Pendergrast"

E. PENDERGRAST
MEMBER

"M.A. Sills"

M.A. SILLS
MEMBER

Attachment 1

PL070386

CITY OF HAMILTON

BY-LAW No. _____

**To Amend By-law 05-200 to create a new Research and Development
Industrial Zone for the City of Hamilton**

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S.O. 1999, Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

AND WHEREAS it is desirable to enact a new Zoning By-law to comprehensively deal with zoning throughout the City;

AND WHEREAS the said new comprehensive Zoning By-law is being enacted and is coming into force and effect in several stages;

AND WHEREAS this By-law creates a new Industrial – Research and Development Zone applying to the proposed West Hamilton Innovation District lands within the City;

AND WHEREAS this proposed zoning is in conformity with the Official Plan for the City of Hamilton;

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

1. In addition to Interim Control By-law No. 06-028 uses and regulations, the following sections of this By-law also apply to the lands shown within Schedule A of this By-law, being Maps 908, 949, 950, 991, 992;
2. Schedule A of By-law 05-200 is amended by adding additional zone boundaries as shown on Schedule A of this By-law, being Maps 908, 949, 950, 991 and 992.

5. For the purposes of this By-law, the following parking regulations shall also apply:

"A. LOCATION

- a) All Uses
 - i) Required parking facilities shall be located on the same lot as the use requiring the parking.
 - ii) Notwithstanding Subsection i) above, where the provision of parking on the same lot as the use requiring such parking is not possible, or not practical, such parking facilities may be located on another lot within 300.0 metres of the lot containing the use requiring the parking. Such alternate parking shall only be situated in a Commercial, Industrial or Downtown Zone or within the same zone as the use requiring such parking, and shall be subject to Subsection iii) herein.
 - iii) Where the required parking is provided in accordance with Subsection ii) above, the owners of both lots shall enter into an agreement with the City to be registered against the title of both the lot upon which parking is to be provided and the lot containing the use requiring the parking. The lot upon which the parking is located, pursuant to the agreement, shall continue to be so used only for such purposes until alternate parking spaces in conformity with the regulations of this By-law are provided.
 - iv) Parking as provided for in Subsection iii) may be transferred to another lot in accordance with Subsection ii), provided that an agreement as required by Subsection iii) is registered on title of said other lot.
 - v) Unless otherwise regulated in this By-law, parking spaces and aisles, giving direct access to abutting parking spaces, excluding driveways extending directly from the street, shall not be located within 3.0 metres of a street line, and subject to a 3.0 metre wide planting strip being required and permanently maintained between the street line and the said parking spaces or aisle.

B. DESIGN STANDARDS

- a) No parking space shall be less than 2.6 metres in width by 5.5 metres in length, unless otherwise provided for in this By-law;
- b) All required parking shall be provided with adequate means of ingress and egress to and from the street or laneway and shall be arranged so as not to interfere with normal public use of the street or laneway. Any parking lot shall provide for ingress and egress of vehicles to and from a street in a forward motion only;
- c) Notwithstanding Subsection b) herein, in the case of parallel parking:
 - i) Each parallel parking space shall have a minimum width of 2.4 metres and a minimum length of 6.7 metres. End spaces which have a clear, unobstructed approach, shall have a minimum length of 5.5 metres; and,
 - ii) The aisle giving access to a parallel parking space shall have a minimum width of 3.6 metres for one-way traffic and a minimum width of 6.0 metres for two-way traffic.
- d) Parking spaces, driveways and any widening(s) thereof shall be provided and maintained with stable surfaces such as asphalt, concrete or other hard surfaced material, crushed stone or gravel, and shall be maintained in a dust free condition. Parking lots shall be designed and maintained with stable surfaces such as asphalt, concrete or other hard-surfaced material; and,
- e) Notwithstanding Subsection b) herein, in the case of a barrier free parking, each parking space shall have a minimum width of 4.4 metres and a minimum length of 5.5 metres.

C. BARRIER FREE PARKING

Where 10 or more parking spaces are required by Section 5.6 "Parking Schedules" for all uses on a lot, barrier free parking shall be designated and provided as part of the required parking spaces, in accordance with the following requirements:

Required Parking Spaces	Designated Barrier Free Parking Spaces
10 – 50 spaces	Minimum 1 space

50 – 100 spaces	Minimum 2 spaces
100 or more spaces	Minimum 2 spaces plus for every additional 100 required spaces, 1 additional barrier free spaces shall be provided.

D. PARKING SCHEDULES

Parking spaces shall be provided in the minimum quantity specified in Column 2 hereunder for each use listed in Column 1, subject to the provisions of Subsection b) herein:

Column 1	Column 2
iv. Commercial Uses	
Motor Vehicle Service Station	4 for each service bay
Office	1 for each 30.0 square metres of gross floor area, which accommodates such use.
Repair Service	1 for each 50 square metres of gross floor area, which accommodates such use.
v. Industrial Uses	
Manufacturing, Warehouse	1 for each 115.0 square metres of gross floor area, which accommodates such use."

E. PERMITTED USES AND REGULATIONS

For the purposes of this By-law, the following uses and regulations shall also apply:

- “1.0 PERMITTED USES**
- Manufacturing
 - Motor Vehicle Service Station
 - Repair Service
 - Warehouse

- 1.1 PROHIBITED USES**
- Notwithstanding Section 1.0, a drive through facility is a prohibited use, along with the following types of manufacturing uses, except if these uses are considered only as an accessory use to another permitted manufacturing use:

Beverage Distillation
Manufacturing of Asbestos, Phosphate or Sulphur Products
Primary Production of Chemicals, Synthetic Rubber, Plastic, Asphalt or Cement; not including mixing, blending, treatment or similar process
Processing or Refining of Petroleum or Coal
Processing, Milling or Packaging of Animal Feed
Salvage, Recycling or Scrap Yard
Slaughtering, Eviscerating, Rendering or Cleaning of Meat, Poultry or Fish or by-products thereof
Smelting, Refining, Rolling, Forging, or Extruding of Ore or Metal
Stamping, Blanking or Punch-Pressing of Metal
Tanning or Chemical Processing of Pelts or Leather
Vulcanizing of Rubber or Rubber Products
Explosives Manufacturing
Pulp and Paper Mills

1.2 REGULATIONS

- a) Maximum Gross Floor Area for Office Use No office building shall have a gross floor area of 10,000 square metres or greater.
- b) Location of Manufacturing, Motor Vehicle Service Station, Repair Service, and Warehouse Uses The following uses shall only be permitted within an existing building:
Manufacturing;
Motor Vehicle Service Station;
Repair Service;
Warehouse."

6. The Clerk be 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 ____ day of _____, 2006.

OMB Order No.
CI-06-L

Schedule "A" to By-law No. _____

Zoning Map 908

Zoning Map 949

Zoning Map 950

Zoning Map 991

Zoning Map 992



Map Reference Number	By-Law Number	Effective Date of By-Law

Legend
 --- Limits of Conservation Authority Regulated Area

MAP 991
 SCALE 1:1,000
ZONING MAP 991
 PUBLISHED 06/09/2017



