

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



14-042-LPAT
Exhibit 1

ISSUE DATE: December 10, 2019

CASE NO(S): PL140314

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	North End Neighbours et. al.
Subject:	Proposed Official Plan Amendment No. 233
Municipality:	City of Hamilton
OMB Case No.:	PL140314
OMB File No.:	PL140314
OMB Case Name:	North End Neighbours v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	North End Neighbours et. al.
Subject:	By-law No. 14-042
Municipality:	City of Hamilton
OMB Case No.:	PL140314
OMB File No.:	PL140315

Heard: November 22, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Dave Stephens and Bryan Ritskes

H. Turkstra

City of Hamilton ("City")

J. Wice

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
NOVEMBER 22, 2019 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The City had adopted Official Plan Amendment No. 233 (“OPA”) and its Implementing Zoning By-law No. 14-042 (“ZBA”). David Stephens and Bryan Ritskes (“Appellants”) appealed both to the Ontario Municipal Board (“Board”).

[2] The City brought a Motion to dismiss the appeals of the Appellants. The Board in a decision issued March 22, 2016 allowed the Motion and dismissed the appeals of the Appellants.

[3] The Appellants through their counsel filed a Request for a Review. The Board’s former Associate Chair directed that an oral motion be scheduled to dispose of the Request.

[4] The oral motion was heard on February 23, 2017 and the Board issued a decision April 4, 2017 finding that in the original Board decision, an error of law had been made which materially affected the conclusion of the Board, and allowed the Motion for Review, set aside the decision, and remitted the matter back to the Associate Chair for further direction and disposition.

[5] Subsequent thereto the parties entered into a Tribunal-led mediation which led to the Appellants withdrawing their appeals against OPA 233 and the parties were able to reach a settlement with respect to the ZBA.

[6] A settlement hearing was scheduled for November 22, 2019 and the City filed the affidavit of Alissa Mahood, the Senior Project Manager, Community Planning and GIS with the City of Hamilton in support of the proposed settlement.

[7] The Tribunal relying on the affidavit of Ms. Mahood and upon hearing the submissions of counsel, allowed the appeal of the Zoning By-law in part, and approved the revised the revised ZBA arising out of the settlement all for the reasons set out below.

DECISION

[8] Arising out of the Tribunal-led mediation, the Appellants withdrew their appeals against the OPA.

[9] The proposed settlement would amend the Council adopted ZBA to ensure that any parking generated by the uses in Piers 6 and 7 is accommodated north of Guise Street and Bay Street North, through the modification of section 2(l) of the ZBA as highlighted below:

That notwithstanding Section 18A.(9) of Zoning By-law No. 6593, 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 that is both within 300 m. of the lot containing the use requiring the parking and located north of Guise Street and Bay Street. Such alternative parking shall only be situated in a commercial or industrial zone, or on lands owned by the City of Hamilton or the Hamilton Port Authority, and that 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 alternative parking spaces in conformity with the regulations of Zoning By-law No. 6593 are provided. (emphasis added)

[10] The Tribunal finds, based on the affidavit evidence of Ms. Mahood as found in Exhibit 1, that the ZBA as amended satisfies the matters of Provincial Interest in section 2 of the *Planning Act*, is consistent with the Provincial Policy Statement 2014, conforms to the Growth Plan 2019, conforms to the City's Secondary Plan, and accordingly the Tribunal allows the appeal in part, and approves the revised ZBA as found in Exhibit 1 being By-law No. 12-042.

[11] This is the Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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

Exhibit 1

Authority: Item 6.5
Planning Committee
Report: 14-002 (PED14012)
CM: February 4, 2014

Bill No. 042

**CITY OF HAMILTON
BY-LAW NO. 14-042**

**To Amend Zoning By-law No. 6593 (Hamilton),
respecting lands located on the north side of Guise Street,
east of MacNab Street North and west of
Hughson Street North**

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 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 6.5 of Report 14-002 of the Planning Committee at its meeting held on the 4th day of February, 2014, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this By-law will be in conformity with the Official Plan of the Hamilton Planning Area, approved by the Minister under on June 1, 1982, upon approval Official Plan Amendment No. 233;

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

1. That Sheets No. W1 and W2 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended by changing the zoning from the:
 - (a) "F-1/S-838a" (Waterfront Recreational) District, Modified to the "F-1/S-1641"-H' (Waterfront Recreational-Holding) District, Modified, on the lands comprised of Block 1;
 - (b) "F-1/S-838a" (Waterfront Recreational) District, Modified to the "F-1/S-1642"-H' (Waterfront Recreational-Holding) District, Modified, on the lands comprised of Block 2; and,
 - (c) "F-4/S-838a" (Waterfront Services) District, Modified to the "F-1/S-1641"-H' (Waterfront Recreational-Holding) District, Modified, on the lands comprised of Block 3;

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

2. That the "F-1" (Waterfront Recreational) District regulations, as contained in Section 12A of Zoning By-law No. 6593, be modified to include the following special requirements, applicable to Blocks 1, 2, and 3, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A":
 - (a) That notwithstanding Section 12A.(1)(a) of Zoning By-law No. 6593, multiple-dwelling units in conjunction with non-residential uses on the ground floor, and only in the same building as another use, shall be permitted.
 - (b) That notwithstanding Section 12A.(1)(a) of Zoning By-law No. 6593, personal services establishments shall be permitted accessory to a hotel.
 - (c) That notwithstanding Section 12A.(1)(b) of Zoning By-law No. 6593, transient or visitor docks shall be permitted.
 - (d) That notwithstanding Section 12A.(1) of Zoning By-law No. 6593, no dry docks, dry-sail, and on-land boat storage shall be permitted except as accessory to the rental or charter of boats or canoes.
 - (e) That Sections 12A.(1)(a) and 12A.(1)(d) be deleted in their entirety.
 - (f) That notwithstanding any of the provisions of Section 12A. of Zoning By-law No. 6593, that for any building located or oriented predominantly at or toward Guise Street, that a minimum of 65% of the ground floor façade facing Guide Street shall be window glazing.

- (g) That Section 12A.(1)(c) of Zoning By-law No. 6593 be deleted in its entirety and replaced with the following:

“(c) Commercial Uses:

1. A retail store.
2. A bank machine(s), including an enclosed kiosk or structure to house the bank machine(s).
3. A photographer’s or artist’s studio.
4. A restaurant, tavern, or refreshment stand.
5. An outdoor patio and that Section 18.(11)(e) shall not apply to an outdoor patio.
6. A sailing, boating, or navigational school and an establishment for the sale of bait, and the sale and rental of recreational equipment including the charter of rental of boats, canoes, or bicycles, with small-scale commercial uses ancillary to these uses, including but not limited to, marine supply stores, boat service and repair shops.
7. A business and professional person’s office but not on a ground floor.”

- (h) That notwithstanding Section 12A.(1)(c) of Zoning By-law No. 6593, no drive-through facility shall be permitted for any commercial use.

- (i) That Sections 12A.(1)(e)3 and 12A.(3) of Zoning By-law No. 6593 shall be deleted in their entirety.

- (j) That Sections 12A.(2)(a), 12A.(2)(b) and 12A.(2)(c) of Zoning By-law No. 6593 shall be deleted in their entirety and replaced with the following:

“(a) Height Requirements:

1. No building or structure located or oriented predominantly at or toward Guise Street shall exceed 2-storeys and 11.0 m. in height, measured from the front façade facing Guise Street, or 3-storeys and 14.0 m. in height, measured from the rear façade facing Hamilton Harbour.

2. Notwithstanding Section 12A.(2)(a)1., above, all other buildings or structures are permitted a maximum height of 3-storeys and 14.0 m.

(b) **Setbacks:**

1. A maximum setback of 4.0 m. shall be provided and maintained for any building or structure with direct pedestrian access from Guise Street.

(c) **Floor Area Requirements:**

1. For a use permitted under Section 12A.(1)(c) of Zoning By-law No. 6593, a maximum gross floor area of 500 sq. m. shall be permitted for each individual retail or office establishment.”

(k) That notwithstanding Section 18A.(7) of Zoning By-law No. 6593, no parking space shall be less than 2.6 m. in width by 5.5 m. in length.

(l) That notwithstanding Section 18A.(9) of Zoning By-law No. 6593, 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 that is both within 300 m. of the lot containing the use requiring the parking and located north of Guise Street and Bay Street. Such alternative parking shall only be situated in a commercial or industrial zone, or on lands owned by the City of Hamilton or the Hamilton Port Authority, and that 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 Zoning By-law No. 6593 are provided.

(m) That notwithstanding Sections 18A.(1)(f), 18A.(10) and 18A.(22) of Zoning By-law No. 6593, parking for a hotel may be arranged as tandem or stacked parking, provided there is the continued use of a valet service.

3. That the “F-1” (Waterfront Recreational) District regulations, as contained in Section 12A of Zoning By-law No. 6593, be further modified to include the following additional special requirement, applicable only to Block 2, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”:

- (a) All special provisions of the “F-1/S-1641” (Waterfront Recreational) District shall apply, except that business and professional offices shall not be permitted.
4. That the “F-1” (Waterfront Recreational) District regulations, as contained in Section 12A of Zoning By-law No. 6593, be further modified to include the following special requirement, applicable only to Block 3, the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”:
- (a) All special provisions of the “F-1/S-1641” (Waterfront Recreational) District shall apply except that:
 - (i) No building or structure located or oriented predominantly at or toward Guise Street shall exceed 3-storeys and 14.0 m. in height, measured from the front façade facing Guise Street, or 4-storeys and 19.0 m. in height, measured from the rear façade facing Hamilton Harbour.
 - (ii) Business and professional person’s offices are only permitted within a building or structure located or oriented predominantly at or toward Guise Street, but not on a ground floor and not within a building on a pier.
 - (b) That notwithstanding Section 2.(e) of this By-law, one hotel shall be permitted.
5. That the ‘H’ symbol applicable to lands referred to in Section 1(c) of this By-law shall be removed conditional upon:
- (a) the North End Traffic Management Plan, approved by Council on October 13, 2010, be implemented for the area north of the CN railway line within the West Harbour (Setting Sail) Secondary Plan Area, to the satisfaction of the Manager of Surveys and Technical Surveys, Public Works Department, and the Director of Planning.

The ‘H’ symbol shall be removed by amendment to this By-law, and the development of the lands referred to in Section 1(c) of this By-law may, at such time, proceed in accordance with the “F-1” District, Modified provisions, subject to the special requirements referred to in Sections 2 and 4 of this By-law.

6. That the ‘H’ symbol applicable to lands referred to in Section 1 of this By-law shall be removed conditional upon:
- (a) completion and approval of a servicing study to determine the expected sanitary flows, and to identify all works necessary to convey flows to the existing municipal system, to the satisfaction of

the Manager of Engineering Approvals (Development Engineering).

The 'H' symbol shall be removed by amendment to this By-law, and the development of the lands referred to in Section 1 of this By-law may, at such time, proceed in accordance with the "F-1" District, Modified provisions, subject to the special requirements referred to in Section 2 of this By-law.

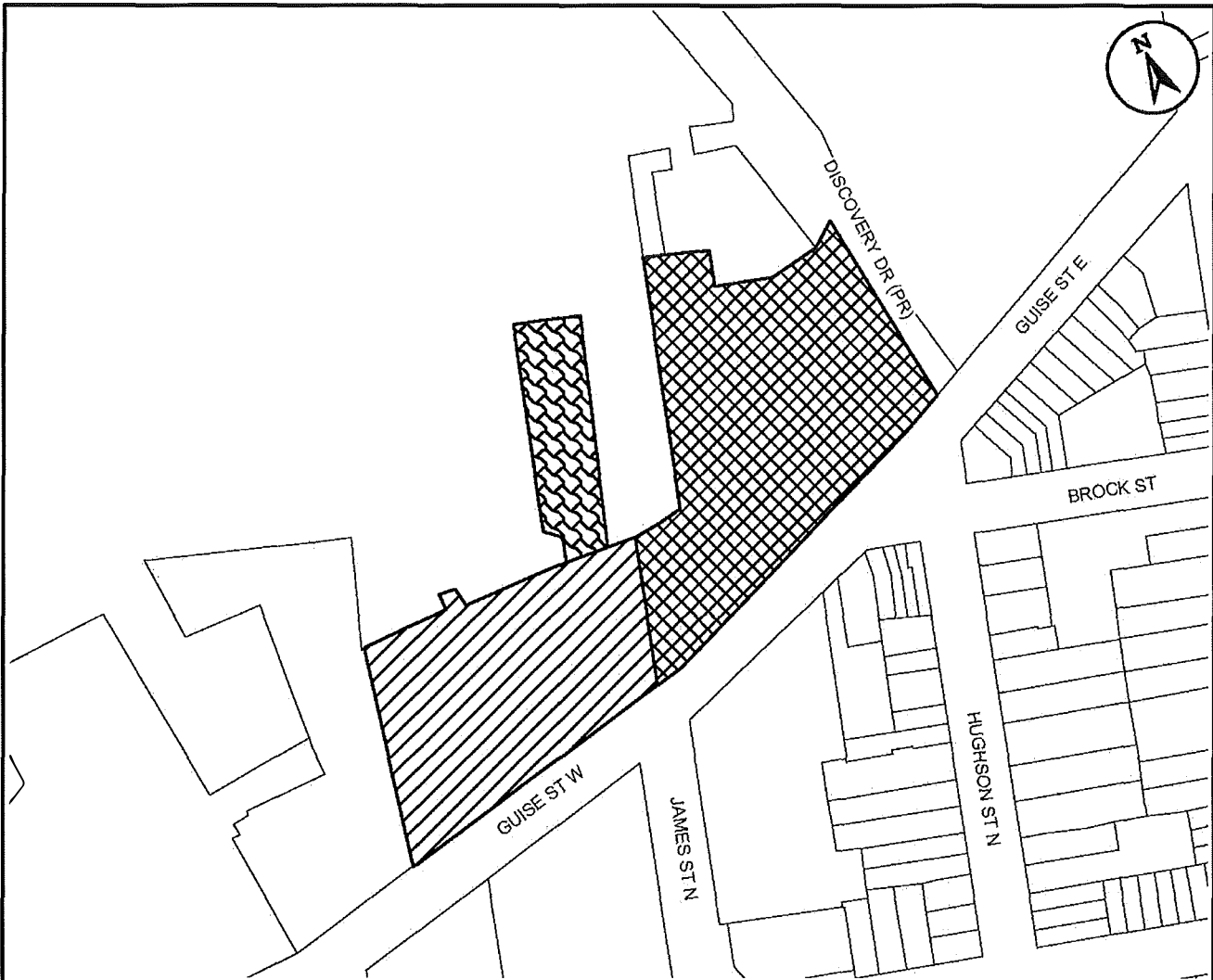
7. That no building or structure shall be erected, altered, extended, or enlarged; nor shall any building or structure or part thereof be used; nor shall any land be used, except in accordance with the "F-1" (Waterfront Recreational) District provisions, subject to the special requirements referred to in Sections 2, 3, and 4.
8. That By-law No. 6593 (Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1641 and Schedule S-1642.
9. That Sheet No. W1 and W2 of the District Maps are amended by marking the lands referred in Section 1(a) and 1(c) of this By-law as S-1641, and the lands referred in Section 1(b) of this By-law as S-1642, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A":
10. 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 26th day of February, 2014.

R. Bratina
Mayor

R. Caterini
Clerk

CI-13-A



This is Schedule "A" to By-Law No. 14-

Passed the day of, 2014

Mayor

Clerk

Schedule "A"

Map Forming Part of
By-Law No. 14-_____

to Amend By-law No. 6593

Subject Property

Hamilton West Harbour Waterfront Recreation Master Plan



Block 1 - Change in Zoning from the "F-1/S-838a" (Waterfront Recreational) District to the "F-1/S-1641" - 'H' (Waterfront Recreational - Holding) District



Block 2 - Change in Zoning from the "F-1/S-838a" (Waterfront Recreational) District to the "F-1/S-1642" - 'H' (Waterfront Recreational - Holding) District



Block 3 - Change in Zoning from the "F-4/S-838a" (Waterfront Services) District to the "F-1/S-1641" - 'H' (Waterfront Recreational - Holding) District

Scale:
N.T.S.

File Name/Number:
CI-13-A

Date:
October 16, 2013

Planner/Technician:
GM/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT