

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: WARD 2
COMMITTEE DATE: September 18, 2012	
SUBJECT/REPORT NO: Review of Denied Application ZAR-11-034 for Lands Known as 121 Augusta Street (Hamilton) (PED12002(a)) (Ward 2)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Edward John (905) 546-2424 Ext. 5803
SIGNATURE:	

RECOMMENDATION:

- (a) That Report PED12002(a) be presented to the Ontario Municipal Board as the City’s written recommendations further supporting the **Denial** of ZAR-11-034 for 121 Augusta Street (Hamilton) given the proposal, as intended, would entrench an undesirable institutional use in an area of Hamilton intended for residential development and, as such, the proposal does not conform to the Hamilton Official Plan and Urban Hamilton Official Plan, and does not represent good planning.
- (b) That the information contained in Report PED12002(a) be endorsed and the City of Hamilton’s position on the denied Application ZAR-11-034 for 121 Augusta Street be reaffirmed with respect to its previous decision.

EXECUTIVE SUMMARY

The proposal concerns an application to rezone the lands located at 121 Augusta Street (Hamilton) (see Appendix "A"), from the "L-mr-2/S-1345" (Planned Development - Multiple Residential) District, Modified, to the "L-mr-2/S-1345a-'H'" (Planned Development - Multiple Residential - Holding) District, Modified, with a Special Exception, in order to permit the establishment of a residential care facility for the accommodation of 8 residents.

The City of Hamilton formally denied the application on April 25, 2012, and the decision was subsequently appealed to the Ontario Municipal Board (OMB) on May 24, 2012.

In preparation for the OMB matter, staff's attention was drawn to the difficulty the applicant had in securing alternative locations within the City limits that were conducive and appropriate for the proposed use. On closer examination of the search parameters identified by the applicant, staff determined that the proposed function of the facility will not be that of a Residential Care Facility, and that the characterization of the proposed use as a Residential Care Facility by the applicant's planning consultant is not representative of the actual nature of the intended use, having regard for how the Zoning By-law treats a Residential Care Facility.

On this basis, staff is requesting that Council endorse the amended reasons for denial, as contained within this Report.

Alternatives for Consideration - See Page 10.

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: N/A.

Staffing: N/A.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for approval of a change in Zoning. This requirement was satisfied at the Public Meeting held on January 17, 2012. Notwithstanding the above, in accordance with ss.34(24.1) - 34 (24.6), Council is now being provided the opportunity to reconsider its decision, on the basis of the new information and material provided within this Report.

HISTORICAL BACKGROUND (Chronology of events)

At the Planning Committee Meeting held on January 17, 2012, Application PED12002, for the approval of a Residential Care Facility at 121 Augusta Street (Hamilton), was **DENIED** for the following reason:

- (a) The proposal is contrary to By-law No. 01-142, in that it would further aggravate the existing over-intensification of residential care facilities within the central City.

At the Council meeting held on January 25, 2012, the item was deferred following the request of Alex Thompson, Executive Director of Lynwood Hall (see Appendix "B"). The matter was deferred in order to permit the applicant to work with City staff to ascertain the opportunity for relocation within the City Limits. The City reviewed a number of options, and presented the findings back to the General Issues Committee (GIC) on April 4, 2012 (see Appendix "C").

As detailed in the Report to GIC, the City and applicant were unable to locate an appropriately zoned and financially viable solution based on the parameters identified by the applicant (e.g. minimum of 10,000 square feet building - 5,000 square feet for Classrooms and/or Offices and 5,000 square feet for residential purposes) and Municipal interests. On this basis, the original recommendation by Planning Committee was forwarded to City Council, and the application was formally denied on April 25, 2012.

The decision was subsequently appealed to the Ontario Municipal Board on May 24, 2012, on a number of grounds, detailed in the appeal letter submitted on behalf of the applicant by Turkstra Mazza (see Appendix "D").

POLICY IMPLICATIONS

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). The PPS provides general policies that focus growth in Settlement Areas, as well as Policy 1.4.3, which encourages the facilitation of housing that meets the social, health, and well-being of current and future residents, including those with special needs.

Provincial Growth Plan for the Greater Golden Horseshoe

The application has been reviewed with respect to the Provincial Growth Plan for the Greater Golden Horseshoe (Places to Grow). The Growth Plan provides policies that manage growth and direct general residential intensification to the built-up areas, as per the Policies contained in Sections 2.2.2 and 2.2.3.

Hamilton-Wentworth Official Plan

The subject property is designated “Urban Area” within the Hamilton-Wentworth Official Plan, in which 96% of new residential housing units will be accommodated to the year 2020. Policy C-3.1 outlines that a wide range of urban uses will be concentrated in the Urban Area, and identifies downtown Hamilton as the regional centre, offering the widest range of goods and services in the Region.

Part B of the Regional Official Plan concerns quality of life, and Policy B-3.11 a) identifies that Area Municipalities (now the City of Hamilton) are required to prepare a strategy for the development of housing opportunities suitable to a variety of needs, including the provision of group homes and special needs housing, to name a few. This strategy was undertaken and adopted in 2001, as part of work completed by the Community Initiatives Section of the Community Planning and Development Division.

Hamilton Official Plan

The subject property is designated “Residential” on Schedule “A” Land Use Plan in the former City of Hamilton Official Plan, and “Medium Density Apartments” in the Corktown Neighbourhood Plan.

New Urban Official Plan

The New Urban Hamilton Official Plan was adopted by Council on July 9, 2009, and was approved, with modifications, by the Minister of Municipal Affairs and Housing on March 16, 2011, but is currently under appeal, and is not yet in effect. The subject lands are designated “Neighbourhoods” on Schedule E-1 of the Urban Hamilton Official Plan.

RELEVANT CONSULTATION

Not Applicable.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The proposal concerns an application to rezone the lands located at 121 Augusta Street (Hamilton) (see Appendix “A”), from the “L-mr-2/S-1345” (Planned Development - Multiple Residential) District, Modified, to the “L-mr-2/S-1345a-‘H’” (Planned Development - Multiple Residential - Holding) District, Modified, with a Special Exception, in order to permit the establishment of a residential care facility for the accommodation of 8 residents.

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The intent of the application was to relocate the residential component and day programming activities, operated by Lynwood Charlton Centre for the existing residents (which are presently located at 52-56 Charlton Avenue West, Hamilton), to the subject property. A day treatment program and administrative area, currently operating at the subject property by Lynwood Charlton Centre, will continue to operate on the first floor of the subject land, while the residential program for 8 adolescent females with mental health needs is proposed to be located on the second floor, which is currently vacant. In addition, it is understood that further Day Treatment services (COMPASS Day Treatment), currently operating at a separate location on Augusta Street, is to be consolidated within the 121 Augusta Street location which, as understood from the submitted Planning Justification Report, would serve both the proposed residents and the wider community.

The subject lands are located at the northwest corner of the intersection of Augusta and Baillie Streets, within the Corktown Neighbourhood. The area surrounding the subject property is predominantly residential, consisting of single detached dwellings to the north, west, and south, and a vacant office building to the east. Beyond the adjacent properties, there is an active Canadian Pacific Rail line to the north and Shamrock Park to the east.

The two-storey building that occupies the subject property was originally constructed as a flour mill, and it includes a partially finished basement and a third storey penthouse, which is used as a storage facility. Since 1997, the building has accommodated children's mental health programming, administered by such agencies as Community Adolescent Network, Hamilton Children's Aid Society, Banyan Youth Services, and Charlton Hall COMPASS Day Treatment Program.

The property is designated "Residential" in the Hamilton Official Plan and "Medium Density Apartments" in the Corktown Neighbourhood Plan. The applicable zoning District is the "L-mr-2/S-1345" (Planned Development - Multiple Residential) District, which, although having a site-specific modification permitting a general office use within the existing building, was provided with the intention that the lands be zoned in the future to the residential "E" (Multiple Dwellings, Lodges, Clubs, Etc.), "E-1" (Multiple Dwellings, Lodges, Clubs, Etc.), or "E-2" (Multiple Dwellings) District, in accordance with the Neighbourhood Plan designation.

In preparation for the OMB matter, staff's attention was drawn to the difficulty the applicant had in securing alternative locations within the City limits that were conducive and appropriate for the proposed use. On closer examination of the search parameters identified by the applicant, staff determined that the proposed function of the facility will not be that of a Residential Care Facility, and that the characterization of the proposed use as a Residential Care Facility by the applicant's planning consultant is not representative of the actual nature of the intended use, having regard for how the Zoning By-law treats a Residential Care Facility.

The Residential Care Facility definition, as contained in Hamilton By-law No. 6593, clearly states:

“Residential Care Facility” means a group living arrangement, within a fully detached residential building occupied wholly by a minimum of four supervised residents and a maximum number of supervised residents, as permitted by the district, exclusive of staff, residing on the premises because of social, emotional, mental or physical handicaps, or problems or personal distress that is developed for the well being of its residents through the provision of self-help, guidance, professional care, and supervision not available in the resident’s own family, or in an independent living situation or if:

- (i) The resident was referred to the facility by hospital, court, or government agency; or,*
- (ii) The facility is licensed, funded, approved, or has a contract or agreement with the federal, provincial, or municipal governments.*

A residential care facility is not considered as an emergency shelter, lodging house, corrections facility, or retirement home.”

The above definition clearly articulates that the use of a Residential Care Facility is one required to be in a *‘fully detached residential building’* and that the said building is to be *‘occupied wholly’* by staff and residents, as permitted by the district. This is in clear contrast to the proposal, which seeks to accommodate the use in a former factory/warehouse building and to operate a use, which, through combining a number of existing social services provided to both residents and the wider community onto one site, would appear to function not as a Residential Care Facility, but as a comprehensive institutional facility.

It is staff’s opinion that the intent embedded within the RCF definition is to ensure that the use remains one that is fundamentally residential, and one which actively seeks to move away and separate itself from the concept of *‘institutionalizing’* the use. The above definition, in addition to the City-adopted Radial Distance Separation (RDS), is considered to appropriately locate, at a residential scale, the use of residential buildings as RCF’s.

This is substantiated in more detail within the Discussion Paper, which initiated the RDS and refined the adopted definition in force and effect for residential care facilities. The document, entitled *‘Residential Care Facilities, Long Term Care Facilities, Correctional Facilities and Hostels - Discussion Paper No.2’*, which was formulated following discussion with Service Providers and neighbourhood groups, characterized the Residential Care Facility Use as one clearly intended to be located within residential buildings integrated within existing neighbourhoods. In particular, the Discussion paper

states that 'one of the main principles of a residential care facility is [neighbourhood] integration'.

On this basis, staff would suggest that the application of the Radial Distance Separation criteria would no longer be the only appropriate criteria for assessment - given that it is a planning tool apportioned to RCF's - for which the proposed use does not comply. Alternatively, a further review of the proposal, assessing the merits of an institutional use within the existing building at 121 Augusta Avenue, generates different concerns that, although not originally explored, have been detailed in this Report for consideration by Committee and Council.

The requirements put forward by the applicant, as detailed in the Report to GIC included, but were not limited to, the following:

Facility Space Size:

Minimum 10,000 square feet of space, with the capacity to separate into two 5,000 square foot bundles (Day Treatment classrooms and Residence area) (see Appendix "C" for full parameters).

The Planning Justification Report provides more detailed context of the intended operation of the use and, in particular, address the following:

- Day programming on first floor; residential on second floor;
- Staffed by approximately 20 full time equivalents; and,
- Relocate existing Day Treatments Services.

It is the opinion of staff that the above criteria and description of the intended use characterize it more in line with that of a comprehensive institutional facility. As a consequence, it has been determined that the impacts of the proposed use extend far beyond the typical considerations given to the assessment of a site for a residential care facility; particularly as RCF's are governed through a By-law and definition that, in order to facilitate their successful neighbourhood integration, actively mitigates impacts in terms of scale, intensity of use, built form, and location.

As the proposal does not conform to the definition of an RCF, and is inconsistent with the planning intent of such a use as contemplated by the Zoning By-law, the RDS issue is not applicable, as the use in question is not that of an RCF. Nonetheless, the proposal instead constitutes a use which is institutional in its functions and, as such, the residential character of the neighbourhood would be potentially eroded. Consequently, given the above, staff has, therefore, concluded that a re-evaluation of the merits of the proposed location is warranted, as well as a more detailed review of the intended land use anticipated on the subject lands, as detailed in the City's Neighbourhood Plan and Official Plan policies.

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To that end, staff offers the following opinion, which has been formed with regard to the entire Policy framework, but in the interest of succinctness, only expressly references certain key policies.

At the Provincial level, staff notes that the Planning Justification Report opines that the Planning Policy Context, delivered through the Provincial Policy Statement (PPS) and Places to Grow - Growth Plan (P2G), provide broad planning policy direction to build strong communities through intensification, and that integral to that function, is the promotion of housing forms and opportunities to support the social, health, and well being requirements of current and future residents. Referenced in particular, are Policies 1.1.1 and 1.4.3(b)(1) of the PPS, and through Policies 2.2.2 and 2.2.3 of P2G.

Staff considers that the denial of this application is by no means in conflict with these policies. Indeed, it is staff's opinion that the existing housing strategy, adopted through the City of Hamilton's Official Plan and Zoning By-law, places similar emphasis on the importance of providing such housing throughout Hamilton. In support of this position, is the understanding that RCF's are a use unrestricted within the Residential Designations and Residential Zoning Districts (as well as some non-residential Districts) of the former City of Hamilton - subject to the RDS criteria and other provisions prescribed by the individual zoning district. On this basis, staff concludes that the existing Municipal Policy Framework satisfactorily accommodates provincial interest, and provides ample opportunity for the provision of these uses throughout Hamilton.

What is in contention within this Report is the understanding that the proposal does not constitute a housing form as defined by the City's Zoning By-law and, as such, does not benefit from the housing strategy approach adopted by the City of Hamilton. The use, as detailed below, is subject to alternative criteria for assessment on the basis that it constitutes a comprehensive institutional use that places separate impacts and considerations upon a given resource. The following, consequently, addresses those additional considerations, given the context of the site and the planned function of the area.

The property is designated "Residential" within the existing Hamilton Official Plan, with further guidance provided through the Council Adopted Neighbourhood Plan. The Corktown Neighbourhood Plan, approved by Council in 1973, and updated in 1997, provides guidance for the future development of the subject lands and the surrounding lands within the former City of Hamilton.

SUBJECT: Review of Denied Application ZAR-11-034 for Lands Known as 121 Augusta Street (Hamilton) (PED12002(a)) (Ward 2) - Page 9 of 11

In accordance with Official Plan Policies D.2.2 and D.2.9, Council will ensure that all new development and/or redevelopment complies with the provisions of these Plans, and shall be guided and have regard for adopted Neighbourhood Plans. It is important to note that the Ministerial-Approved Urban Hamilton Official Plan similarly places emphasis on conformity with Neighbourhood Plans through Policy F.1.2.7, and directs consideration of any subsequent amendments to Neighbourhood Plans to the same section of the Plan that assesses formal Official Plan Amendments. In particular, Policy F.1.1.4 a) requires the *“impact of the proposed change on the City’s vision for a sustainable community”* to be considered.

This particular Neighbourhood Plan includes both policies and a land use map, which identifies the subject property as “Medium Density Apartments”. The future intended use of these lands is further guided by the site-specific “L-mr-2” (Planned Development - Multiple Residential) District zoning, attached to the lands, which is intended to guide and facilitate the transition from the existing industrial form of development into a residential form.

Indeed, this has been realized in a number of areas within the vicinity, whereby previous “L-mr-2” (Planned Development - Multiple Residential) and “J” (Light and Limited Heavy Industry, Etc.) Districts have been rezoned into residential developments. Most notably, these developments have included 124 Walnut Street, immediately adjacent the subject lands, and 100 Ferguson Avenue (while rezoned, as yet, 124 Walnut has not been redeveloped).

Staff is, therefore, of the opinion that prejudicing the transition of these uses, as intended by the Neighbourhood Plan, would undermine the planned function of the area. With particular reference to the proposal, the intention to maintain the existing building and intensify uses which are considered institutional, as opposed to residential, is, in the opinion of staff, entrenching uses inconsistent with the Neighbourhood Plan, as opposed to facilitating the intended future residential transition of the area. The institutional uses, as proposed, are not considered to be consistent with the existing residential character of the area, and would potentially impact residential amenity.

It is noted from the submitted Planning Justification Report that the applicants consider the proposal a beneficial re-use of an existing building, consistent with Policy C.7 iii) of the Hamilton Official Plan. However, as raised consistently throughout this Report, the use of the structure is not considered residential and, as such, consideration under this Policy is not relevant. Furthermore, while staff recognizes the overall intent to provide the opportunity for the adaptive re-use of buildings throughout Hamilton, this is a general Policy provision not intended to inhibit the realization of the planned function of an area, nor is it at the expense of sound planning considerations, as raised above.

Consistent with the general planned function of neighbourhoods, the location criteria for Institutional uses adopted through the new City Wide Institutional By-law (contained in Zoning By-law 05-200) created a hierarchy of Institutional Zoning Districts; whereby, comprehensive institutional uses have been directed to the periphery of neighbourhoods, require larger individual sites, and are intended to be serviced by higher order road networks. The proposed site is not considered to provide these necessary pre-requisites.

It is, therefore, the opinion of staff that formal redevelopment of the lands consistent with the planned function, as identified by the Neighbourhood Plan and the Zoning By-law, would result in a use that would be compatible and provide the opportunity to comprehensively accommodate parking demands, neighbourhood character, and other amenity impacts of the future intended residential use. Conversely, the current proposal - to accommodate institutional uses within the existing building - would serve only to exacerbate issues of incompatibility and frustrate future redevelopment of the property in accordance with the planned function.

Consequently, staff does not consider the proposal to meet the intent of the Neighbourhood Plan and the overall planned residential development of the neighbourhood and, as such, the proposal does not conform to the Hamilton Official Plan and Urban Hamilton Official Plan, and does not represent good planning.

In conclusion, on closer examination of the search parameters identified by the applicant, staff determined that the proposed function of the facility will not be that of a Residential Care Facility. The intended operation of 121 Augusta Street, as detailed by the applicant and agent, is instead that of a comprehensive institutional facility. As a consequence, the original Report to Council failed to adequately address the comprehensive impacts and incompatibilities of the operation of the facility.

On the basis of this understanding, staff is of the opinion that the proposal, as intended, would entrench an undesirable institutional use in an area of Hamilton intended for residential development and, as such, the proposal does not conform to the Hamilton Official Plan and Urban Hamilton Official Plan, and does not represent good planning.

Council is asked to acknowledge and endorse the information contained within this Report, and reaffirm their position with respect to their previous decision.

ALTERNATIVES FOR CONSIDERATION:

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

In the event Council does not support the amended reasons for denial, staff shall proceed to the Ontario Municipal Board on the basis of the decision provided by the City of Hamilton Planning Committee held on January 17, 2012.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Social Development

- ◆ Residents in need have access to adequate support services.
- ◆ People participate in all aspects of community life without barriers or stigma.

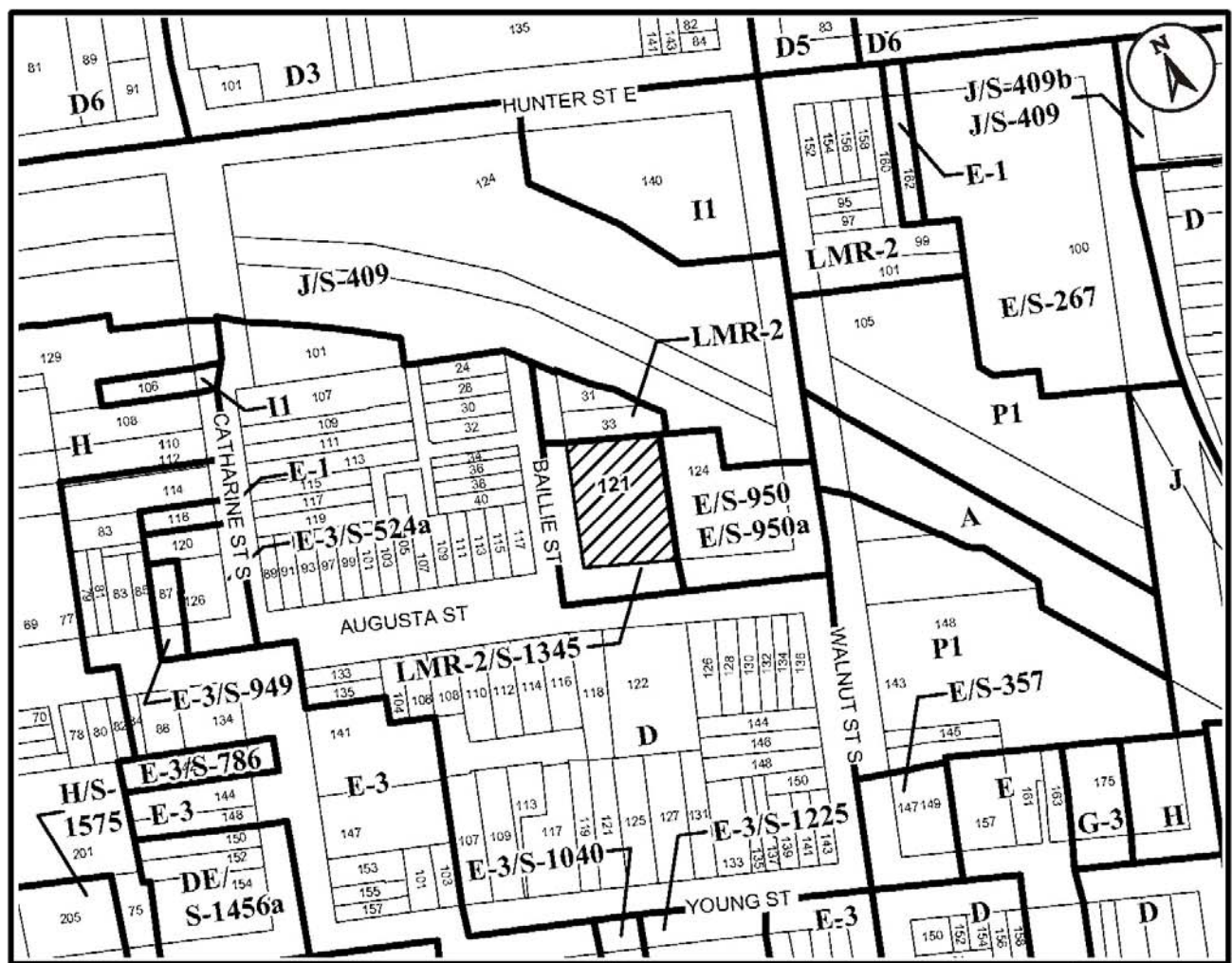
Healthy Community

- ◆ Plan and manage the built environment.
- ◆ An engaged Citizenry.
- ◆ Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services).

APPENDICES / SCHEDULES

- Appendix "A": Location Map
- Appendix "B": Deferral Letter - Alex Thompson
- Appendix "C": GIC Report
- Appendix "D": Appeal Letter

:EJ
Attachs. (4)



● Site of the Application



Ward 2 Key Map

N.T.S.

Location Map



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number:
ZAR-11-034

Date:
June 17, 2011

Appendix "A"

Scale:
N.T.S.

Planner/Technician:
DM/AL

Subject Property

121 Augusta Street



Lynwood Charlton Centre

January 19, 2012

Mayor Bob Bratina and Members of Council
City of Hamilton
71 Main St. W.
Hamilton, Ontario,
L8P 4Y5

Dear Sirs and Madames:

The partnership between Charlton Hall Child & Family Centre, now amalgamated with Lynwood Hall Child & Family Centre, and known as Lynwood Charlton Centre, and the City of Hamilton over the last 50 years has been important and successful to both organizations. We are now at a point in history where important decisions have to be made with respect to the existing premises at 52-56 Charlton Avenue West that have significant implications for both organizations.

Based on a Building Condition Assessment Report we have seen, retaining our presence at this location has significant financial implications for the City. This includes not only ongoing maintenance expenses, but also improvements in the order of \$1.2 million to bring the building up to reasonable standards. In addition, there is the opportunity of gained revenue that could be realized if the property is sold. We have spent a lot of time and effort preparing a proposal which we feel will help the City out of this difficulty. It allows the City to not only avoid costly expenditures, but also realize income from the sale of a surplus asset. Our proposal can be implemented without any cost to the City.

We understand the report is coming forward to the City from the City's Portfolio Management Committee in February dealing with the issue of the property at 52-56 Charlton Avenue West. Whatever the outcome of that discussion, both parties will have to work in a mutually co-operative fashion to find a solution which best meets the needs of the girls we are serving, as well as the broader needs of the City of Hamilton.

The exercise of finding a proper solution to the challenge in front of us we feel requires a full investigation of all alternatives before any of the choices open to our organizations are taken off the table. After a full review of all options, both parties will be in a better position to make an informed decision as to how best to proceed. After the analysis, it may be that our proposal is seen in a much more favourable light. On the other hand, if other more viable options come forward, we would commit to implementing them in concert with the City. We are not tied to any one solution, and are open to considering a range of opportunities. However, we would not want to eliminate the option we have presented at Augusta Street as no one can tell at this point whether or not it may ultimately be the best solution.

In addition, we still believe that an opportunity for dialogue with the neighbours would be helpful, given our success in these endeavours in the past, and given the general success that comes with open, honest and fair dialogue between parties. The City has a rich history of facilitating such matters. We feel that the resources of the Planning Department could be effectively used to assist in this endeavour.

Appendix "B" to Report PED12002(a) (Page 2 of 2)

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The bottom line is that, given the wide range of public interests involved, it is incumbent upon both of us to fully assess all of the options that might be available to us before making a decision that has long-term implications for both organizations.

As matter of information we have also provided you with a copy of our an "open response" to neighbours concerns which was delivered to them in the fall of last year prior to our request for a meeting with them.

Sincerely,

G.P. Alex Thomson

G.P. Alex Thomson B.A. M.Sc.
Executive Director

NOTE: "Open Response" is
attached as Appendix "E" to
Item 7 of Planning Committee
Report 12-001

c.c. John Nemeth, President, Lynwood Charlton Centre

7.2



INFORMATION REPORT

TO: Mayor and Members General Issues Committee	WARD(S) AFFECTED: Ward 2
COMMITTEE DATE: April 4, 2012	
SUBJECT/REPORT NO: Lynwood Charlton Centre (CM12005)	
SUBMITTED BY: Chris Murray City Manager	PREPARED BY: Paul Johnson (905) 546-2424 ext 5598
SIGNATURE:	

Council Direction:

On January 25, 2012, Council passed a motion regarding report PED12002, which read as follows:

"That the Application for an Amendment to Hamilton Zoning By-law No. 6593 for Lands Known as 121 Augusta Street be deferred, to the April 11th Council meeting to allow Staff to report to the General Issues Committee regarding the investigation and collaboration for an alternative location that meets the needs of Lynwood Charlton Centre, the City of Hamilton, and most importantly the young women that will be supported by this facility."

The information provided below summarizes the process, findings and conclusions of the joint effort of City staff and Lynwood Charlton Centre staff and Board members to investigate alternative locations.

Information:

The Process:

Following the motion by Council, a working group was formed with representatives from the City of Hamilton and Lynwood Charlton Centre to develop a work plan to explore alternative locations.

Facilitation of the process occurred through the City Manager's Office (Neighbourhood Development). As the discussions progressed, staff from various City departments assisted with technical support and attended meetings as required. This included staff from Public Works (Facilities) and Planning and Economic Development. Input was also provided by the Portfolio Management Committee as the current Charlton Hall facility is a City-owned asset.

**SUBJECT: Neighbourhood Development Strategy- Update (CM11007(b)) (City Wide)
(Outstanding Business List Item)**

The first step was to understand the parameters of an alternative location search and Lynwood Charlton Centre provided that outline to the working group (Appendix A). In summary, the key parameters were:

- Located near ancillary services
- Approx. 10,000 square feet
- Provide high quality space for residential (8 individuals bedrooms) and day treatment program (classrooms, clinical space)
- Meet Ministry of Children and Youth Services regulations (i.e. size of bedrooms, number of washrooms, access to green space etc.)
- Fully accessible
- Financially viable

The parameters discussion was helpful in setting the context for our alternative property search. It reinforced that the most positive outcome for the program delivered by Lynwood Charlton Centre was to combine the residential program (known as Charlton Hall) with broader day treatment programs occurring both at Charlton Hall and the facility at 121 Augusta Street.

Discussions also took place regarding financing and it was noted that Lynwood Charlton Centre did have funds set aside for renovations (approximately \$500,000). Should Lynwood Charlton Centre find an alternative location and sell 121 Augusta Street there would be some additional resources available. What level of funds would be available from the sale was difficult to estimate given the value of the property, the current mortgage and the fact that the facility is co-owned by the Ministry of Children and Youth Services and Lynwood Charlton Hall.

Given the parameters and the timeframe, the working group agreed to examine three options that the group felt offered the strongest possibility for finding an alternative location. Those options were:

Option 1 – Separating the Uses

While the desired outcome was an integrated facility for residential and day treatment programs, this option explored the feasibility of separating the uses but keeping the programs in close proximity. Exploring this option allowed for more flexibility in terms of the size of facilities and also recognized that the day treatment programs already located at 121 Augusta Street were not subject to zoning amendments.

Option 2 – Alternative Properties

Lynwood Charlton Centre agreed to undertake a property search. A commercial property search was conducted by Effort Trust and used the parameters outlined in Appendix A as a guide. The property search focused both on Lynwood Charlton Centre's preferred area (a central downtown neighbourhood) as well as properties across the lower and upper city. Lynwood Charlton Centre also worked with the

SUBJECT: Neighbourhood Development Strategy- Update (CM11007(b)) (City Wide)
(Outstanding Business List Item)

Ministry of Children and Youth Services to explore whether any other child and youth residences in Hamilton were available for purchase.

Option 3 – Renovation of Current Charlton Hall Facility

Through the Public Works Department (Facilities), the City of Hamilton facilitated a meeting to review the possibility of renovating the current Charlton Hall facility (52-56 Charlton Avenue West) to meet the future needs of Lynwood Charlton Centre. The current facility is a City-owned asset and Charlton Hall is the sole tenant of the facility. The facility management consultant who had provided the condition assessment report on Charlton Hall in October, 2011 was invited to participate in this process and provide advice regarding the best course of action should the parties agree to move forward on this option.

The Findings:

Option 1 – Separating the Uses:

To be successful with this option, the day treatment program at 121 Augusta Street would need to be sustainable and the residential program would have to be located nearby.

To sustain 121 Augusta Street, Lynwood Charlton Centre would need to find a tenant to occupy approximately 5,000 square feet (half of the building). Initial investigations did not reveal any partners who were in need of a location for services that complemented the existing day treatment programs already being delivered by Lynwood Charlton Centre. In addition, it was felt that few, if any, community partners would be able to commit to a long-term lease agreement which would be a requirement of Lynwood Charlton Centre in order to ensure the viability of the day treatment facility.

For the residential program, no properties suitable for an eight bed residential facility were available close to 121 Augusta Street. If the residential program was to remain at 52-56 Charlton Avenue, then significant renovations would also be required (as noted in Appendix B).

Option 2 – Alternative Properties:

The commercial property search revealed one potential property. It was located centrally and provided the suitable square footage to accommodate the residential and day treatment programs. An initial review of the property by the Planning and Economic Development Department indicated the property was zoned to permit up to 20 residents and the Department is not aware of any other residential care facilities in proximity to the property that would impose any restrictions based on radial separation. The property is listed in excess of \$1M and would require significant renovations (estimated to be at least \$1M). The property is also currently occupied.

A review of other child and youth residences in the City of Hamilton found no facilities that were available and suitable.

SUBJECT: Neighbourhood Development Strategy- Update (CM11007(b)) (City Wide)
(Outstanding Business List Item)

Option 3 – Renovation of Current Charlton Hall Facility:

Assistance with the discussion related to renovating the current Charlton Hall Facility was provided by staff from Public Works (Facilities) and Gerald Evans from Evans Consulting. Evans Consulting had previously provided a Building Condition Assessment report for the property. Summary advice from Evans Consulting is provided in Appendix B.

At the meeting we began by reviewing the Building Condition Assessment report with the consultant and two pieces of information were brought forward. First, the total costs associated with completing the work outlined in the Building Condition Assessment were clarified (see pg. 3 of Appendix B). The estimates provided in October, 2011 did not include certain costs and contingencies.

More importantly, advice was provided that simply repairing the current facility may not be the correct solution going forward. Because the current facility is not in concert with the Lynwood Charlton Centre program, the opinion of the consultant was that investing large amounts of cash into the current design of the facility would not be a practical approach. Instead, a more aggressive renovation may be required that would repair the exterior of the building, upgrade the building's infrastructure and reconstruct the interior architectural elements to meet the functional requirements of the Lynwood Charlton Centre. The size of the facility (approximately 17,000 square feet) provides enough space to meet the needs of Lynwood Charlton Centre.

Initial estimates indicate a renovation of this magnitude could be in excess of \$2.5M. This estimate is based on the exterior and infrastructure costs outlined in the Building Condition Assessment and estimated per square foot costs of interior renovations to buildings of this type. It is important to note that detailed cost estimates based on a design were not completed as part of this initial investigation.

Conclusion:

Despite exploring a number of options, no location was identified that cost neutral (or near to cost neutral) alternative for Lynwood Charlton Centre.

To move forward on either the potential alternative property identified in the property search or to undertake a substantial renovation of the current location would require significant investments of cash towards the project. To date, neither Lynwood Charlton Hall nor the City has the resources in place to move forward on any potential alternatives identified in this report.

LYNWOOD CHARLTON CENTRE

121 Augusta Street

Alternative Property Search Parameters

The following parameters articulate the requirements of an alternate site:

Facility Location:

- Ideally located in a central downtown neighborhood, walking distance to core services
- Must have or capacity to meet required zoning regulations

Facility Space Size:

- Minimum 10,000 square feet of space, with the capacity to separate into two 5,000 square foot bundles (Day Treatment classrooms and Residence area)
- If on two floors, fully accessible (elevator or lift plus ramps)

Parking:

- Sufficient parking for 15-18 spaces

Green Space:

- Green space on site or close proximity to public green space to meet Ministry regulations

Facility Functional Space:

- Space for 8 individual bedrooms, and sufficient personal bathrooms for 8 teens
- Living space to accommodate normal daily routines including dining room, TV room, craft/games room
- Work space to accommodate family visiting room, staff offices, food storage, laundry room, etc.
- Spatial requirements must meet Ministry for Children and Youth Services licensing regulations and Lynwood Charlton standards of care.
- Must have handicapped accessibility

Financial Requirements:

- Must be financially viable for the Centre
- Must consider that the Centre is already tied to a mortgage at the Augusta site and cannot afford to purchase an additional site without assistance to manage the current obligations, unless the Augusta site is sold or rented (revenue to carry the overhead costs)



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March 6, 2012

Subject: CITY OF HAMILTON
CHARLTON HALL
52-56 Charlton Avenue West

Introduction

A meeting was held at the current Charlton Hall facility, February 27, 2012 with members of Lynwood Charlton Centre and the City of Hamilton to review the content and implications of the Building Condition Assessment Report submitted by Evans Consulting & Management Services October 2011.

The content of that meeting suggested that the information contained in the Building Condition Assessment (BCA) might be used to form a project that would implement all of the work identified in the report. The purpose of this Appendix is to clarify the content of the Building Condition Assessment report, to put some context on the objective of a BCA and to provide additional insight into some alternatives for the facility known as the Charlton Hall in the City of Hamilton before creating the project.

These comments and recommendations are to be appended to our original report as a result of that meeting.

Clarification

The purpose of a Building Condition Assessment is to give the owner of the building an evaluation of their asset at a given point in time. Building Condition Assessments (BCA) typically cover the basic disciplines used in the design, construction and maintenance of a facility; Architectural, Structural, Mechanical, Electrical and specialty items.

The premise behind a BCA is that every building component has a predictable finite life. Some of the caveats to that concept are the quality of the maintenance program, the consistency of the capital investment, and the intended use versus the actual use of the facility.

A Building Condition Assessment identifies existing deficient conditions in logical groupings and priorities, associated recommended corrections and corrective costs. Costs and predicted service life standards are based on industry standard databases.

A comparative industry indicator/benchmark used to indicate the relative physical condition of a facility is the Facility Condition Index (FCI). The FCI is expressed as a relation of the cost of remedying existing



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deficiencies and capital renewal requirements to the current replacement value. The FCI scale is a range of 0-100%, with the higher FCI values representing poorer facility condition. A fair to good facility is generally expressed as having an FCI of 10-15%.¹ These percentages are adjusted by each organization based on the standards they wish to employ within their asset holdings.

Assuming the Charlton Hall has a replacement value of 2.2 Million Dollars, the FCI for this facility would be approximately 50%; which is an extremely high percentage. For this reason, we would recommend that the City of Hamilton explore all opportunities to improve the property for its 'highest and best use'.

The Condition Assessment Summary

The Building Condition Assessment financial summary shows a future investment requirement of approximately \$1.2 million in the Charlton Hall over the next ten year period. The report breaks down the expenditures into 5 priorities, noting that immediate expenditures, and some of the items listed in year one are a combination of code compliant issues and life safety concerns (page 12). As one assesses the types and priorities of the expenditures, there is a further rationale as to why costs have accelerated so quickly over time to bring such a large expenditure to bear on the owner.

Firstly, the life safety, building and fire codes have changed over time to require more stringent regulations to protect the occupant. Secondly, the facility is no longer being used as a residence, but as a shelter type facility. Under the Ontario Building Code, the building would be (in our opinion) classified as Group C occupancy; shelter for women, hostels and lodging houses. Thirdly, the building has significant deferred capital maintenance issues that have not been resolved due to a shortage of funds. The envelope of the building is not 'tight', with constant moisture penetration and migration, issues with rodent infestation (squirrels, raccoons) and structural concerns; these are very costly when dealing with the challenges of a 3 storey building. Those issues have accelerated over time.

Although the City and the Tenant have made attempts to reduce the extent of the maintenance problems, it has been a challenge when repairing one section of the building and not having the funds to complete all of the work that is associated with the repair. An example is the roof and soffit. The roof has been repaired, but the soffit and fascia work was a patch that does not solve the entire problem.

Discussion during the meeting seemed to indicate that there may be an interest to rejuvenate the facility and to create a project to undertake all of the work identified in the BCA as a onetime capital project. The exercise of a building condition assessment does not consider this approach. If a project were undertaken of this scale, soft costs in addition to the work requirements need to be added to the budget. Our estimate for those soft costs would be as follows:

¹ Taken from Asset Lifecycle Modeling Publication



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Description	Estimate
General Requirements (BCA)	\$1,200,000
Design and Project Mgmt Fees	150,000
Design – A&E, Project Mgmt Fees	
Allowances	150,000
Construction Contingency	
Abatement costs and testing	
Inflationary Costs 5% (depending on project start)	
Total Estimate	\$1,500,000

The result of the Building Condition Assessment indicates that the Facility Condition Index is far too high and suggests that continuing to make repairs on an ongoing basis may not be the correct solution going forward. We suggest that there comes a point where the strategy has to consider a more holistic approach. Continuing to invest large amounts of cash into a facility *that is not in concert* with the program requirements, in our opinion, is not a practical approach.

In our opinion...

Although not part of the initial scope of work, we are providing some additional comments for consideration beyond the building condition assessment report.

Alternatives include;

- A) Do nothing – **increases liability to all parties involved.** – NOT VIABLE
- B) Implement the building condition assessment findings – does not respond to the building’s functional needs, is contrary to the Facility Condition Index and it is possible the tenant will eventually leave.
- C) Renovate the building entirely to fit the need. – Would need to explore this option to determine if renovating is cost prohibitive.
- D) Sell the asset at a below market cost. – Always an alternative.

Alternative C – Renovate the Building

In our opinion, we believe that the City of Hamilton, along with Lynwood Charlton Centre, could explore the merit of renovating the current Charlton Hall facility to meet their accommodation needs. An aggressive renovation would include conducting many of the repairs identified in the BCA report such as the exterior of the building, upgrading the building’s infrastructure (water/sanitary, heating,



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and electrical elements) and reconstructing the interior architectural elements to meet the functional requirements of Lynwood Charlton Centre.

In this case, we are assuming that the purpose of the building is to more readily meet the needs of Lynwood Charlton Centre's future functional program needs, at the same time as upgrading to meet the life safety and building codes. The program functional needs and exact design details have not yet been defined, and are an integral step in determining the costs associated with the extent of the renovations required. As an example, the building has a kitchen facility. It will be costly to move that kitchen and to update it. Changes to interior walls will have structural implications that may also be costly and so on.

Therefore our approach would be as follows:

1. Confirm that the building footprint, location and the overall square footage meet the need of Lynwood Charlton Centre before continuing to develop a project plan of any type.
2. Determine the Lynwood Charlton Centre's role in this exercise; it is important to have some commitment early on in the process.
3. Utilize the Building Condition Assessment Report as part of the project planning process.
4. Create a project plan that considers the following assuming that the building is to remain with the Lynwood Charlton Centre.
 - a. Create a project team for the eventual use of the facility. Establish a plan for the building that meets all of the functional needs and serves the long term (15-20 years) for the facility;
 - i. Renovate the building totally inside and out; take the facility back to the building shell and redesign based on the functional need. **Our recommendation** would be to maintain the envelope of the building *as much as possible* throughout the design and the eventual renovation. Include in the project plan scope items such as the detached coach house, landscape design and grounds changes (City Planning will want some changes here); parking requirements and so on. Even if the project becomes phased because of costs, these items should be included in the total project design.
 - ii. Expect additional items that did not turn up on the BCA; flooring, wall changes, ceiling changes; these have been upgraded recently, but using laminate flooring to cover over current conditions.
 - iii. Consider implications of existing legislation and new code requirements; Accessibility for Ontarians with Disabilities, Ontario Fire Code, Ontario Building Code, Municipal Bylaws etc.



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- iv. Engage the appropriate planning and design professionals to *provide specific detailed cost estimates* that maximize the use of the facility based on a conceptual design. *Do not go beyond the conceptual design* stage until there is agreement on the scale and scope and cost of the project. Be generous with contingencies and allowances. Buildings of this vintage are full of surprises in a renovation environment.
 - v. Consider impacts in the Community and pressures that will come to bear once the project is announced or identified. The Local Heritage Committee will have an interest in the project along with other Community Associations. These Groups and the City's Planning Department will have additional requirements that need to be heard. *It is important to identify those hidden costs early on in the process.* As an example, the windows in the building all have to be changed; they are beyond their useful life. If the Local Heritage Committee has any voice in the type and style of the architectural components, there will almost certainly be an added cost.
5. Confirm the project, and move forward with design and eventual execution of the tender, construction and occupancy.

Alternative D – Sell the Facility

Although demolition of the building and reconstructing on the same site has been mentioned, we see this alternative as not being as viable; *in our opinion*, the City of Hamilton should sell the asset before going to this alternative. The Facility is not beyond revitalization, it is in need of a large cash infusion.

Respectfully

Gerald W. Evans, AIHM
Evans Consulting & Management Services

Turkstra Mazza
 Hamilton London Toronto
 OFFICE OF THE CITY CLERK

MAY 24 2012

REC'D BY: V. Bichera DATE: _____
 REF'D TO: T. McKe DATE: _____
 REF'D TO: P. Hall DATE: _____
 REF'D TO: M. Kassir DATE: _____
L. Barnes-Records
 ACTION: _____

15 Bold Street
Hamilton Ontario Canada L8P 1T3
Receptionist 905 529 3476 (905 LAW-FIRM)
Facsimile 905 529 3663
nsmith@tmalaw.ca

May 24, 2012

Hand Delivered

To The City Clerk
City of Hamilton
City Hall
71 Main Street West
Hamilton, ON, L8P 4Y5

Dear Sir:

**RE: Lynwood Charlton Centre – 121 Augusta Street, Hamilton
Section 34(11) – Planning Act
Notice of Refusal Date: May 9, 2012
APPEAL LETTER**

THE APPEAL

We represent Lynwood Charlton Centre ("Lynwood" - an amalgamated corporation of Lynwood Hall Child and Family Centre and Charlton Hall Child and Family Centre), owner of 121 Augusta Street, Hamilton. We hereby appeal the City of Hamilton's refusal ("the Refusal") to pass a Zoning By-law Amendment ("the Rezoning") in response to our Application submitted on June 1, 2011 and deemed complete on June 24, 2011 ("the Proposal").

THE PROPOSAL

Lynwood is a Hamilton charity, publicly funded and licensed by the Ministry for Children and Youth Services and accredited by Children's Mental Health, Ontario. Its mission is to provide mental health services and supports to children, youth and families. It fulfills its mission from different locations in Hamilton. One such location (52 – 56 Charlton) operates a residential care facility with 8 beds and social service programs for 8 adolescent females ("the Charlton Residential Program"). The Charlton Residential Program has operated as a successful part of the Durrand Neighbourhood community without complaint for over 50 years.

Another Lynwood location (121 Augusta Street) operates a day program ("the Augusta Site"). The Proposal is to move the Charlton Residential Program to the Augusta Site, some 8 blocks away. No site alterations are required. Interior renovations and improvements to exterior features will facilitate the Proposal.

THE REZONING

Locating the Charlton Residential Program at the Augusta Site requires a rezoning. The existing zone (L-mr-2/S-1345) is a "placeholder" zone, permitting existing uses only. Other residential uses are contemplated, including a residential care facility of up to 20 residents, but require a rezoning. A residential care facility cannot be within 300 m of another ("the Separation Distance Restriction"). The Augusta Site is within 300 m of another residential care facility. The Rezoning seeks to assess the planning propriety of the Separation Distance Restriction and modify its application on a site specific basis to accommodate the Proposal.

THE REFUSAL

The City of Hamilton rejected the Proposal as contrary to Zoning By-law No. 01-142 in that it would further aggravate the existing over-intensification of residential care facilities within the central City. The City of Hamilton refused the Rezoning on April 25, 2012.

GROUND OFS OF APPEAL

1. **The Rezoning is consistent with the Provincial Policy Statement and conforms with the applicable Official Plan policy**
2. **The Rezoning does not create an Adverse Impact**
3. **The Rezoning achieves the City's De-Intensification Objective**
4. **Inappropriate Application of the Separation Distance Restriction at this site. The Separation Distance Restriction:**
 - a. is a blunt instrument that fails to consider the specific planning context of this neighbourhood and the absence of adverse impact;
 - b. fails to acknowledge that the Proposal results in a de-intensification of residential care facilities from a "Moratorium Area" -- the Charlton Residential Program site;
 - c. fails to acknowledge that, of the existing residential care facilities within 300 m, one can accommodate up to 20 residents while the other can accommodate 6. The Proposal results in 20 residents being accommodated on 3 sites within 300 m instead of the permitted 20 residents on one site;
 - d. fails to acknowledge that the Charlton Residential Program has operated successfully for over 50 years without complaint or adverse impact to the neighbourhood.
5. **Inappropriate Application of the Separation Distance Restriction generally:**
 - a. The Separation Distance Restriction prevents some people (and not others) from choosing where to live. The use of this planning tool to manage overconcentration of housing types within neighbourhoods is the subject of study, consultation and community education by the **Ontario Human Rights Commission** ("OHRC"). The OHRC has intervened in applications before the Human Rights Tribunal of Ontario against other

municipalities who have chosen to use this tool (Toronto, Smith Falls, Kitchener). The OHRC's view is:

"Arbitrary separation distances can lead to contraventions of the Human Rights Code. Many municipalities try to use minimum separation distances as a way to manage "overconcentration" of some types of housing within one neighbourhood. Minimum separation distances limit housing options and can have a negative impact on the people who rely on these options.

Instead, look at the broader issues and consider incentives and ways to encourage and facilitate affordable housing in the other parts of the municipality. This is a positive approach, instead of the punitive one that minimum separation distances often suggest.

We have heard many comments that zoning has long been used to limit group homes and other supportive housing. However, emerging decisions in the courts and at the Human Rights Tribunal of Ontario tell us that this approach does not incorporate the required human rights principles." (Letter from Barbara Hall, Chief Commissioner, Ontario Human Rights Commission to Mayor Bob Bratina and Members of City Council, City of Hamilton dated January 24, 2012).

- b. The use of dated and restrictive planning tools to achieve decentralization of certain types of housing has been comprehensively (and recently) reviewed by the **Ontario Municipal Board** ("OMB") – Kitchener (City) Official Plan Amendment Nol. 58 – [2010] O.M.B.D. No. 66. The OMB has provided clear direction that, to achieve Provincial Policy consistency and Official Plan conformity, positive action for the decentralization of facilities is required.

CONCLUSION

The Rezoning, on a site specific basis, is positive action that achieves Provincial Policy housing and social objectives with no demonstrable adverse impact on the neighbourhood AND achieves the City's objective of decentralization in a Moratorium Area.

We enclose our cheque for \$125. We request the immediate scheduling of a hearing. 5 days is sufficient. No Prehearing Conference is required (the Parties are aware of the others' positions). Counsel can cooperate with Witness Statement exchange.

Yours truly,



Nancy Smith
ns/lb

NANCY SMITH PROFESSIONAL CORPORATION
TURKSTRA MAZZA ASSOCIATES, LAWYERS