

UPDATE— Aerotropolis OMB Hearings Explained

The Ontario Municipal Board Phase 2 hearings on the aerotropolis concluded late on January 24 after final arguments by lawyers for the participating parties. Board chair Ms J Zuidema indicated it will take “some time” for her to render a judgment on what she heard over the seven full days of hearings regarding the airport area expansion of the city’s urban boundary.

The hearings focused on whether a boundary expansion should be allowed given the anti-sprawl rules legislated by the province in 2005 and 2006, and if so how large an expansion should be allowed, and if it should also include the airport and a future airport expansion area in addition to the Airport Employment Growth District (AEGD) sought by the city.

This process began eleven years ago when the city made the aerotropolis its number one economic priority and subsequently included it in every one of its six growth “options”. When the province released its draft Places to Grow legislation in 2005, the Dilanni-led council tried to quickly push through an 1134 hectare expansion, but that was blocked by citizen and provincial government appeals. Since that time the size of the AEGD portion has been shrinking.

The city’s calculations assume barely one percent (20 hectares) of the bayfront area is vacant or under-utilized (industrial land).

In 2006 the city claimed it had to have 1030 developable hectares. Opponents plus provincial objections forced that down to the 868 hectares approved by council just before the 2010 municipal election. Now as a result of witness statement exchanges and a backroom deal between the city and a developers group, the number has dropped again to 695 hectares. As the lawyer for Environment Hamilton and Hamiltonians for Progressive Development declared at the hearing: “thank goodness for appellants”.

That 695 number could shrink quite a lot more depending on how the Board rules on various arguments presented at the hearings.

First of all those are “gross hectares”. The city only tried to defend 80% of that amount claiming that it is entitled to the rest to provide servicing for the AEGD. EH-HPD contended that trick isn’t allowed by the provincial rules.

Secondly, an expert witness for the Twenty Road West Landowners group (who say their aerotropolis lands are “better suited for residential uses” instead of the industrial justification being used by the city) provided a detailed accounting of how much industrial land has actually been consumed over the last eight years (less than 20 ha a year), and found there is already far more than needed inside the current urban boundary. He

subsequently decided that calculation should be ignored in favour of the city's methodology, but still found no more than 410 net hectares (590 gross) are needed.

A third and more sensible option is to reject the entire boundary expansion because of additional fundamental flaws in the city's methodology. A key problem is the extreme underestimation of available lands in the older industrial area along the bayfront that was exposed by a volunteer inventory carried out by the Hamilton Civic League.

The city's calculations assume barely one percent (20 hectares) of the bayfront area is vacant or under-utilized. In a review of 35,000 city tax records, the Civic League found over 100 hectares listed as vacant industrial, plus over 700 hectares of industrial properties that have been granted a vacancy rebate, plus well over 100 additional hectares currently for sale or lease in public real estate listings.

On top of this, the city's calculations include a curious deduction from the currently available stock of greenfield business park lands. They deduct an amount equal to 10 percent of the currently occupied industrial zones with the argument that these will become vacant or will be converted to other uses over time and therefore will need to be replaced by aerotropolis lands.

The Board also heard conflicting arguments about the airport (591 ha) and the proposed airport expansion zone (138 ha) both of which the city also wants to add to the urban boundary. The city initially argued these are not employment lands and don't have to be justified, but subsequently decided a few new jobs would result and thus lowering the AEGD "need" by about 25 hectares. EH-HPD contended the airport is already zoned and functioning outside the boundary and there is no need to bring it inside, and that any expansion of the facility could be dealt with by zoning.

The Board also heard expert evidence from EH-HPD witness Richard Gilbert on the poor performance of the airport relative to projections and its poor prospects for achieving anywhere near the currently predicted growth.

The predicted density of employment in city business parks including the aerotropolis is also a significant point of contention. Provincial rules require planning for a minimum of 50 jobs per hectare, but the city calculations assume only 37 and fail to show how the shortfall can be made up.

An unfortunate feature of the hearings was the extremely adversarial stance adopted by the city lawyer who repeatedly challenged the credibility of the expert witnesses of EH-HPD. In her closing arguments, the lawyer implored the Board to dismiss or give "no weight" to their evidence.

A very positive aspect of the hearings were the participant statements made by 17 individuals and organizations – all of them generally supporting the positions of EH-HPD – including the Hamilton Civic League, the Hamilton Chapter of the Council of Canadians and the Hamilton Naturalists' Club. More than a full day of the hearings was set aside for these presentations, which provided detailed, well-researched and very articulate evidence of the multiple negative impacts of the aerotropolis proposal. They pointed

to the unsustainable financial costs, the unacceptable loss of foodlands, the enormous ecological impacts, the underestimation of land vacancy in older industrial areas, and the substantial evidence that city council has willy-nilly converted existing industrial lands to other purposes.

The OMB hearing process has placed a huge financial burden on EH and HPD and our supporters who have made generous donations to offset some of those costs. However, the process is not over and EH and HPD will continue to be vigilant in our efforts to challenge the city's plans. We thank all those who have contributed and ask once again for community financial assistance.

Donations can be made directly to Environment Hamilton via mail or on-line.