SUBJECT: Removal of the Holding ‘H’ Symbol from a Portion of the Lands Known as 398 King Street West (Hamilton) (PED06388) (Ward 1)

RECOMMENDATION:

That approval be given to Zoning Application ZAH-06-69, Good Shepherd Centres Hamilton, owner, for removal of the Holding ‘H’ symbol from a portion of the lands known as 398 King Street West, as shown on Appendix “A” to Report PED06388, on the following basis:

(a) That the zoning of the subject lands be changed from the “DE”-‘H’ (Low Density Multiple Dwellings-Holding) District, Modified to the “DE” (Low Density Multiple Dwellings) District, Modified.

(b) That the draft By-law, attached as Appendix “B” to Report PED06388, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(c) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

The purpose of the application is to remove the Holding ‘H’ symbol from a portion of the lands known as 398 King Street West (see Appendix “A”). The proposal has merit and can be supported since the requisite conditions (i.e. Archaeological Study, Noise Study, Tree Preservation Plan, Record of Site Condition, and Land Use Agreement) for removal of the ‘H’ symbol have been satisfied.

BACKGROUND:

Proposal

The applicant has applied to remove the Holding ‘H’ symbol from a portion of the subject lands (see Appendix “A”). The applicant, Good Shepherd Centres, is proposing to relocate Martha’s House and Mary’s Place from their current locations, and develop a new building for a women’s shelter on the westerly portion of the subject lands, fronting Pearl Street North. The removal of the Holding ‘H’ symbol would also permit the development of a 3-storey, 24 unit apartment building on the easterly side of the subject lands, fronting Ray Street North (see Appendix “C”).

A site plan application (DA-03-117) was submitted for the woman’s shelter on September 16, 2003. This application will be held in abeyance until the ‘H’ symbol has been removed. An application for site plan approval for the apartment building has not as yet been submitted.

Background

On April 1, 2004, the Ontario Municipal Board (OMB) issued its decision on the appeal of Zoning By-law No. 03-231, which was passed by City Council on August 13, 2003. As part of the OMB’s decision, By-law No. 03-231 was amended to include additional regulations, and was appended to the OMB’s decision.

The subject lands were placed in a Holding ‘H’ Zone with the approval of By-law No. 03-231. The ‘H’ symbol can be removed from the subject lands by way of a further amendment, once the following provisions have been satisfied:

(i) That the owner/applicant shall conduct an archaeological assessment of the entire development property and mitigate, through preservation or resource removal and documentation, adverse impacts to any significant archaeological resources found. No demolition, grading or soil disturbances shall take place on the subject property prior to the approval of the Director of Development and Real Estate and the Ministry of Culture confirming that all archaeological resource concerns have met licensing and resource conservation requirements.

(ii) That the owner/applicant shall investigate the noise levels on the site and determine the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of the Environment’s recommended sound level limits. An
SUBJECT: Removal of the Holding ‘H’ Symbol from a Portion of the Lands Known as 398 King Street West (Hamilton) (PED06388) (Ward 1)

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acoustical report, prepared by a qualified Professional Engineer containing the recommended control measures, shall be submitted to the satisfaction of the City of Hamilton, Director of Development and Real Estate.

(iii) That the applicant/owner prepare and submit a tree preservation plan for the existing trees located within the King Street West, Ray Street North and Pearl Street North road allowances and the subject lands, to the satisfaction of the Manager of Forestry, Parks Division, Community Services Department and the Director of Development and Real Estate, Planning and Development Department.

(iv) That the owner has submitted a signed Record of Site Condition (RSC) to the Ministry of Environment. This RSC must be to the satisfaction of the City of Hamilton, including acknowledgement of receipt of the RSC from the Ministry of Environment.

(v) That the property owner enters into an agreement, to the satisfaction of the Director, Building and Licensing Division, Planning and Development Department, that the uses at 20 Emerald Street South (“Martha House”) and 50 East Avenue North (“Mary’s Place”) will be abandoned with no intent to reactivate upon occupancy of Block “5” (NW corner of the subject lands, see Appendix “C”).

ANALYSIS/RATIONALE:

1. As previously stated, By-law No. 03-231 contains five provisions which are required to be satisfied prior to the Holding ‘H’ symbol being removed from the subject lands. Each of the five provisions will be addressed individually.

(a) Archaeological Study

In their letter dated August 8, 2005, the Ministry of Culture advised that:

“The fieldwork and reporting of that activity has met OHA requirements and provincial standards for the conservation of archaeological heritage. As such, we concur with the consultant’s recommendations of no further archaeological investigations for the northeast and northwest portions of the property. As such, licensed-only alteration restrictions are waived for these two quadrants.

However, licensed-only alteration restrictions remain for the southwest quadrant of the property until such time that the site area is subject to Stage 4 excavations, or restrictions are translated into long term protection provisions.”

Based upon the forgoing, this condition has been met to the satisfaction of the Ministry of Culture and the Director of Development and Real Estate.
(b) **Noise Study**

HGC Engineering completed a Traffic Noise Feasibility Study, dated November 19, 2003, for the subject lands. Planning staff reviewed this report and are satisfied that the noise study requirements concerning the removal of the Holding ‘H’ symbol have been met.

The Noise Study recommends that buildings be equipped with mechanical ventilation systems with the provision for the future installation of central air conditioning to allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the City’s and Ministry of Environment’s noise criteria.

Based upon the forgoing, this condition has been met to the satisfaction of the Director of Development and Real Estate and the recommendations will be implemented as part of the site plan process.

(c) **Tree Preservation Study**

A Tree Preservation Plan, prepared by Ferris and Associates, dated January 2004, was reviewed by the City’s Forestry and Horticulture Division. Planning staff was advised on October 4, 2004, that the report submitted satisfies all requirements of the Forestry Section with respect to municipal trees. The Department’s Natural Heritage Planner also reviewed the Tree Preservation Plan and advised staff on May 20, 2005, that she was also satisfied with the report.

Accordingly, this condition has been met to the satisfaction of the Manager of Forestry, Parks Division, Community Services Department (now Public Works Department), and the Director of Development and Real Estate, Planning and Economic Development Department. The recommendations of the report will be implemented through the site plan approval.

(d) **Record of Site Condition (RSC)**

On August 17, 2006, the Ministry of the Environment filed the Record of Site Condition (RSC) on the Environmental Site Registry. Once the RSC has been filed, it has been acknowledged as being completed to the Ministry’s satisfaction.

Based upon the forgoing, this condition has been met to the satisfaction of the Ministry of the Environment, and the Director of Development and Real Estate.
Agreement with the City

As part of the OMB Hearing, the City agreed to amend the zoning of 50 East Avenue North and 20 Emerald Street South to eliminate a residential care facility, emergency shelter, and retirement home or corrections residences as permitted uses for both of these properties. These two properties house Mary’s Place, and Martha House, which are both to be relocated to the subject lands once the new women’s shelter building has been completed.

By-law No. 05-252 was adopted by Council on August 10, 2005, and was appealed to the Ontario Municipal Board (OMB) by Mark Volterman. The OMB dismissed the appeal in its order dated February 21, 2006, as Mr. Volterman did not appear at the hearing.

The legal agreement to abandon the uses at Mary’s Place and Martha House upon occupancy of the new women’s shelter on the subject lands was signed by all parties and registered on December 29, 2005.

Based upon the foregoing, this condition has been met to the satisfaction of the Director, Building and Licensing Division, Planning and Economic Development Department.

2. The public, through numerous emails, phone calls, and through Mr. Thachuck’s presentation to Planning and Economic Development Committee on February 15, 2005, have stated that the Good Shepherd have breeched the Ontario Municipal Board’s decision. The public wanted the Tree Preservation Zone (TPZ) established prior to any works (i.e. soil remediation, archaeological work) occurring on site. The Tree Preservation Plan requires a TPZ, however, it could not be established until the Archaeological Assessment and the Record of Site Condition works were completed as these studies both had to be carried out under the existing trees. Forestry and Planning staff both acknowledge that the work for these studies had to be completed prior to the TPZ being established. Further, the report submitted by Mr. Thachuck referenced unlicensed archaeological work being completed on site. The Ministry of Culture was made aware of this and advised the applicant to ensure that their archaeologist was on site while works were being completed.

In order to implement the OMB’s decision, the applicant had to complete specific studies and works on site which had to occur in a specific order. Since the completion of the archaeological and RSC works, a plastic frost fence was placed on site in areas where the trees to be preserved would not be impacted by any other works being completed on site. Forestry staff inspected the fencing and was satisfied that it would provide sufficient warning and protection from any further works, prior to the establishment of the required TPZ. The TPZ, as described in the Tree Preservation Plan, will be established prior to construction of the new women’s shelter.
Based upon the forgoing, staff is of the opinion that the OMB’s decision has not been breached and necessary works have been carried out in a reasonable and professional manner.

3. The applicant has only applied to remove the Holding ‘H’ symbol from a portion of the subject lands (see Appendix “A”) since the Record of Site Condition (RSC) was only completed for this part of the lands. Prior to the removal of the Holding ‘H’ symbol from the remainder of the lands, the archaeological assessment also has to be completed for the southwest quadrant and the RSC has to be completed for the remainder of the lands. A further application to remove the ‘H’ symbol from these lands will be required to be submitted prior to the remaining lands being developed.

4. It is noted that Section 36 of the Planning Act does not require a Public Meeting to be held for an application to remove a Holding symbol. Further, there is no appeal of a By-law which removes a Holding ‘H’ symbol from land only. The applicant can appeal the decision of Council if the Holding symbol is not removed.

The Planning Act also requires that the City is to only give notice of intention to pass a By-law to remove the Holding symbol to those property owners who had originally requested to be notified of the passage of the By-law imposing the ‘H’ symbol and to the landowner/applicant.

5. The site plan that has been submitted for the proposed women’s shelter has not been approved by the City at this time. It is staff’s position that until the Holding symbol has been removed, the site plan should be held in abeyance. This will ensure that any modifications that may result from any of the studies being completed to remove the Holding symbol can be incorporated into the site plan.

**ALTERNATIVES FOR CONSIDERATION:**

Development of the subject lands cannot occur until the Holding ‘H’ symbol has been removed by way of amending the Zoning By-law.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: N/A.

Staffing: N/A.

Legal: The Planning Act does not require a Public Hearing to be held for the removal of a Holding ‘H’ symbol. However, notice of the intent to pass the By-law must be given to the landowner and anyone who had requested notice. There is no appeal period for the removal of a Holding ‘H’ symbol.
POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement

This application is consistent with the principles and the policies of the Provincial Policy Statement.

Hamilton-Wentworth Official Plan

The subject property is designated as “Urban Area” within the Hamilton-Wentworth Official Plan. Policy 3.1 outlines that a wide range of urban uses, defined through the Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. This proposal conforms to the Hamilton-Wentworth Official Plan.

City of Hamilton Official Plan

With the adoption of Official Plan Amendment No. 187 to the City of Hamilton Official Plan, the subject lands are designated “Major Institutional”. This application conforms to the Official Plan.

RELEVANT CONSULTATION:

N/A.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
The public has participated in the development of this site.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Existing service will be utilized.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:PAM
Attachs. (3)
Location Map

Location: 398 King St W (Hamilton)

Change from the "DE" - "H" (Low Density Multiple Dwellings - Holding) District to the "DE" (Low Density Multiple Dwellings) District, Modified
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Zoning By-law No. 6593 (Hamilton),
as amended by Zoning By-law No. 03-231,
Respecting a portion of the lands located at 398 King Street West
(Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the 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 of the former area municipalities 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 Corporation 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 Section _______ of Report _______ of the Planning and Economic Development Committee at its meeting held on the ______ day of ______, 2006, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;
AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton, in accordance with the provisions of the Planning Act.

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

1. Sheet No. W-12 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended by By-law No. 03-231, is further amended, by changing from the “DE” – ‘H’ (Low Density Multiple Dwellings– Holding) District, to the “DE” (Low Density Multiple Dwellings) District, Modified, on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A” and forming part of this By-law.

2. No building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall land be used, except in accordance with the “DE” (Low Density Multiple Dwellings) District.

3. By-law No. 6593 (Hamilton) is amended by adding this by-law to Section 19B as Schedule S-1486a.

4. Sheet No. W-12 of the District Maps is amended by marking the lands referred in Section 1 of this by-law as S-1486a.

5. 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 day of , 2006.

__________________________________________            __________________________________________
MAYOR                                                   CLERK

ZAH-06-69
This is Schedule "A" to By-Law No. 06-

Passed the ............ day of ....................., 2006

Clerk

Mayor

Schedule "A"

Map Forming Part of By-Law No. 06-______ to Amend By-law No. 6593

Subject Property

398 King St W (Hamilton)

Change from the "DE"-"H" (Low Density Multiple Dwellings - Holding) District to the "DE" (Low Density Multiple Dwellings) District, Modified