

ISSUE DATE:

Jan. 31, 2011



PL070212

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

Losani Homes has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the Regional Official Plan (ROPA-05-06) for the City of Hamilton for a redesignation of employment lands to residential to permit a subdivision proposal, which includes 144 lots, 5 blocks for single-detached dwellings and 10 blocks for townhouses, at a location municipality know as 1187 Barton Street, et al.

OMB File No. PL070212-O070056

OMB Case No. PL070212-O070056

Losani Homes has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the Official Plan (OPA-5-25) for the City of Hamilton for a redesignation of employment lands to residential to permit a subdivision proposal, which includes 144 lots, 5 blocks for single-detached dwellings and 10 blocks for townhouses, at a location municipality know as 1187 Barton Street, et al.

OMB File No. PL070212-O070063

OMB Case No. PL070212-O070056

Losani Homes has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law ZAC-05-128 of the City of Hamilton to rezone lands respecting 1187 Barton Street, et al. to redesignate employment lands to residential to permit a subdivision proposal, which includes 144 lots, 5 blocks for single-detached dwellings and 10 blocks for townhouses.

OMB File No. PL070212-Z070002

OMB Case No. PL100547-O070056

IN THE MATTER OF subsection 51(34) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant:	Losani Homes
Subject:	Draft Plan of Subdivision No. 25T-2005-26
Property Address/Description	1187 Barton Street, et al.
Municipality:	City of Hamilton
OMB Case No.:	PL070212-S070034
OMB File No.:	PL070212-O070056

APPEARANCES:

Parties

Losani Homes

City of Hamilton

Counsel

C. Barnett

M. Kovacevic

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ
ON NOVEMBER 22, 2010, AND ORDER OF THE BOARD**

This dispute has been settled. Losani Homes (the Applicant), proposed a 13.45-hectare residential subdivision in the Stoney Creek area of the City of Hamilton (the City). The area had previously been designated as Employment lands. The application would involve seven aspects:

1. An Official Plan Amendment (OPA) to the Official Plan (OP) of the former Region of Hamilton-Wentworth;
2. An OPA, to the OP of the former City of Stoney Creek;
3. A Zoning By-law Amendment (ZBA), to remove the subject property from the existing ambit of the City's Zoning By-law 05-200;
4. A ZBA to address zoning arrangements for an Open Space component;
5. A ZBA to address new zoning arrangements for lands to be developed;
6. A Draft Plan of Subdivision; and
7. Conditions for the Draft Plan of Subdivision.

However, when the Applicant applied to the City, Council formally refused. The Applicant appealed to the Board.

The City had concerns, notably pertaining to the conversion of Employment lands to residential use. However, discussions during the lead-up to the hearing ultimately led

to consensus. The City and the Applicant agreed on a new configuration, whereby about half the subject property would remain in the Employment lands designation – with additional tangible benefits for Employment uses. On analysis, the City was satisfied that the revised arrangement met its employment needs, particularly as the Applicant would upgrade the Employment lands (via servicing) to “shovel-ready” status.

In addition, the Applicant would build a new stormwater facility (with the potential of servicing a larger area), extend an important road, and purchase some surplus City lands (which had always been the intention, but that arrangement became "crystallised" during the course of discussions). Finally, the residential development would have a higher percentage of townhouses, and hence more density and "intensity" than foreseen in the original application.

At the hearing, the Applicant and the City jointly recommended Board approval of the seven aspects of the proposal. The Applicant's Planner, Mr. Armstrong, offered the expert opinion that there had been due regard for all the applicable statutory criteria, and logical consistency with the other provisions of the applicable Official Plans. The revised arrangements conformed to all applicable criteria for rezoning, and for subdivisions, notably under Subsection 51(24) of the *Planning Act*.

The Board finds no dispute.

The Board is also mindful that one of the components to this proposal is to withdraw the subject property from the existing ambit of Zoning By-law 05-200 – a By-law which has other components currently under appeal before this Board. It was common ground, however, that proceeding with the Parties' recommended course has no effect on those other appeals; and although there has been appropriate public notice of the proposed outcome of these present proceedings, there have been no other objections to that outcome. The Board is satisfied that there is no apparent obstacle to proceeding accordingly.

In conclusion, the Board has carefully considered all the evidence, as well as the submissions of Counsel. The Board concludes, as the expert Planner did, that the proposal – in its seven aspects – now meets the terms of the *Planning Act* for the Official Plan Amendments, the Zoning By-law Amendments, the Draft Plan of Subdivision, and the Conditions thereto.

THE BOARD THEREFORE ORDERS that the appeal is allowed, and:

1. The Official Plans of the former Region of Hamilton-Wentworth and the former City of Stoney Creek are hereby modified in the manner set out in Attachment "1" to this Order.
2. Zoning By-law 05-200 of the City of Hamilton is hereby amended in the manner set out in Attachment "2" to this Order.
3. Zoning By-law 3692-92 of the former City of Stoney Creek is hereby amended in the manner set out in Attachment "3" to this Order.
4. The Board authorizes the City Clerk to assign numbers to the above for record-keeping purposes.
5. The Board Approves the Draft Plan of Subdivision, as it appears at Attachment "4" to this Order.
6. The approval of the Draft Plan of Subdivision is subject to Conditions, as they appear at Attachment "5" hereto.
7. Pursuant to Subsection 51(56.1) of the *Planning Act*, the City shall have the authority to clear the Conditions of Draft Plan approval and to administer final approval of the Plan of Subdivision for the purposes of Subsection 51(58) of the *Act*. In the event that there are any difficulties implementing any of the Conditions of Draft Plan approval, or if any changes are required to be made to the Draft Plan, the Board may be spoken to.

It is so Ordered.

“M.C. Denhez”

M. C. DENHEZ
MEMBER

Attachment “1”

**Official Plan Amendment No. 42
to the Official Plan
of the former Regional Municipality of Hamilton-Wentworth;**

and,

**Official Plan Amendment No. 162
to the Official Plan
of the former City of Stoney Creek.**

**Respecting:
1187, 1199, 1211, 1217, 1227 and 1239 Barton Street**

The following text together with Schedule “A” (Schedule A - General Land Use Plan, Stoney Creek Official Plan) attached hereto, constitute:

1. Official Plan Amendment No. 42 to the former Regional Municipality of Hamilton-Wentworth Official Plan; and,
2. Official Plan Amendment No. 162 to the former City of Stoney Creek Official Plan.

Purpose:

The purpose of these amendments is to redesignate a portion of the lands from industrial to residential in the Regional and local Official Plans to permit the development of a residential subdivision.

Location:

The Subject Property comprises 6.69 hectares, and is situated on the north side of Barton Street between West Avenue and Lewis Road, in the former City of Stoney Creek.

Basis:

- The proposed Amendments are consistent with the Provincial Policy Statement.
- The proposed Amendments implement the resolution of the Council, dated April 7, 2008.
- The site is directly adjacent to the existing Winona Urban Community and represents a logical and ideal expansion of residential development.

- The development will be serviced from the existing municipal watermain and sanitary sewer system, and transportation network.

Actual Changes:

- 1. That the former Regional Municipality of Hamilton-Wentworth Official Plan be amended as follows:**

Map Changes

Map No. 1 – Regional Development Pattern, be amended by redesignating the subject lands from “Business Parks” to “Urban”, and identifying the subject lands as OPA No. 42, as shown on the attached Schedule “A” to this Amendment.”

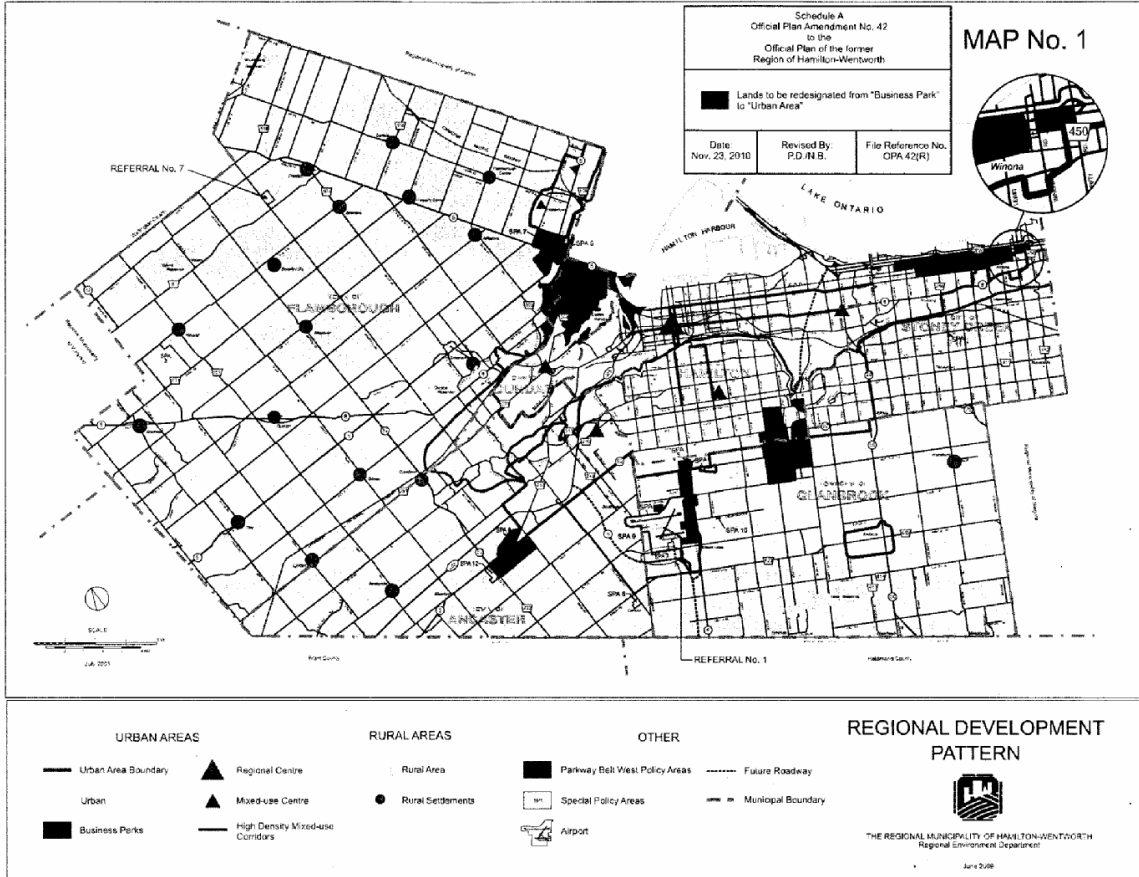
- 2. That the former City of Stoney Creek Official Plan be amended as follows:**

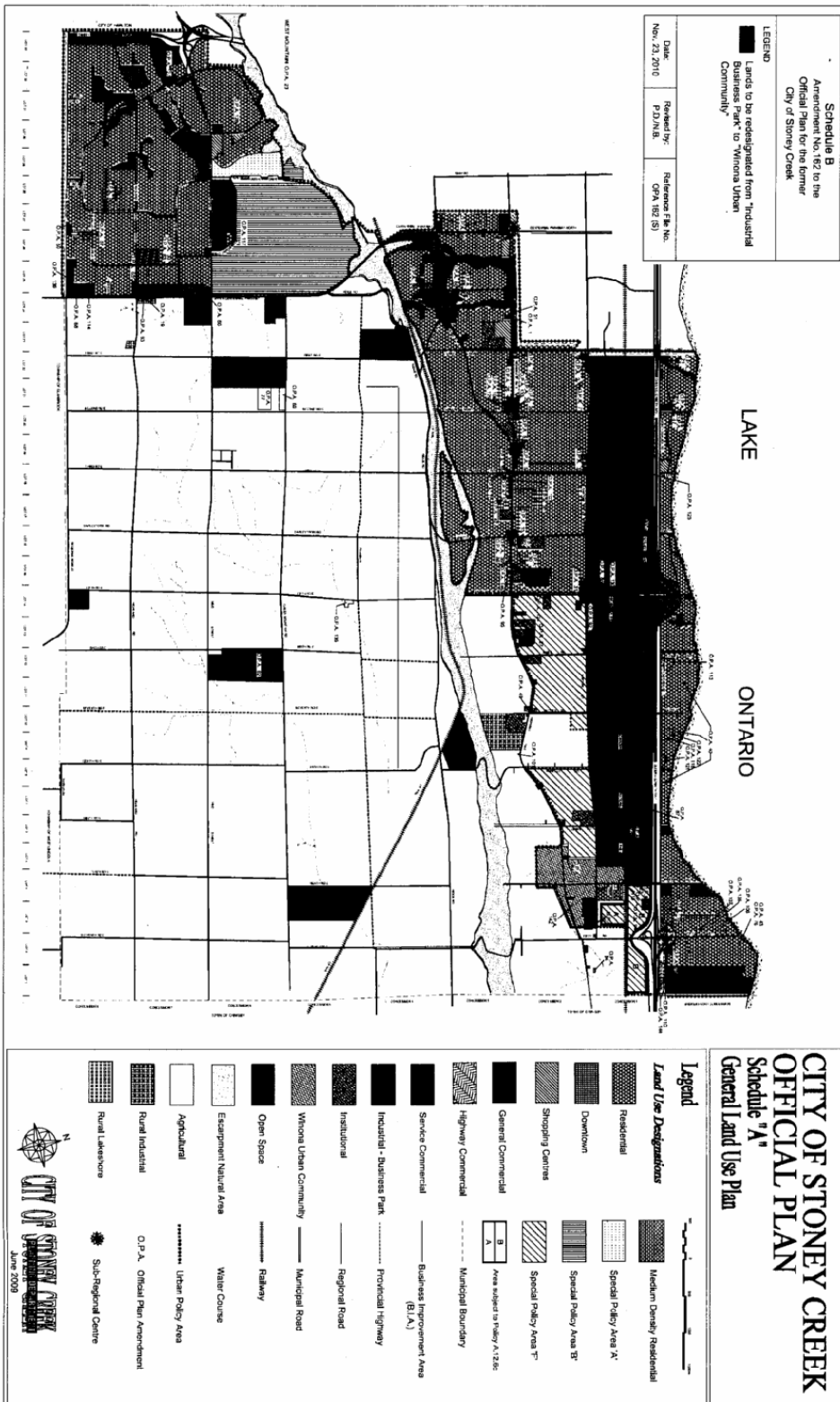
Map Changes

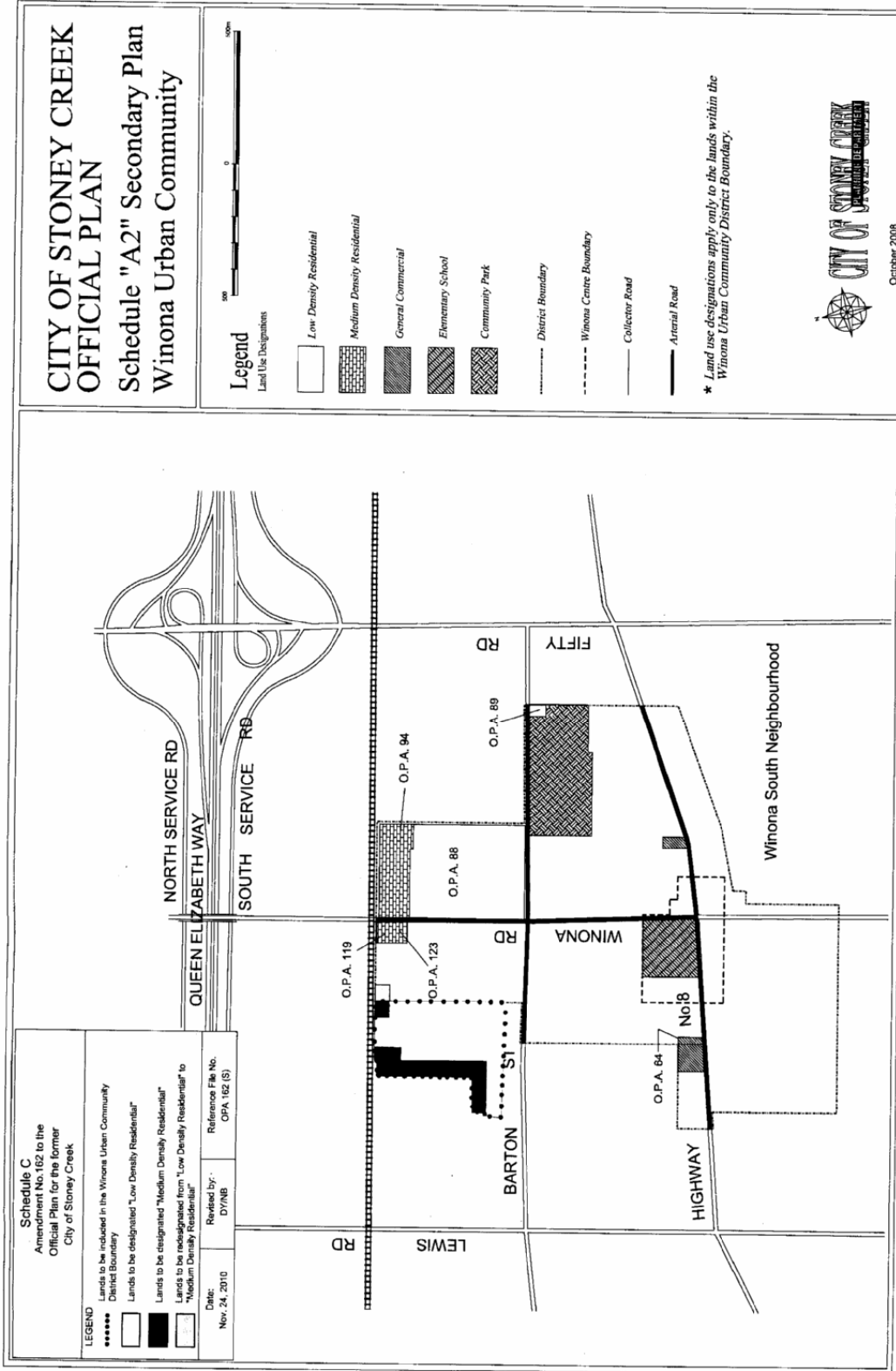
- a) Schedule “A” - General Land Use Plan, be amended by redesignating the subject lands from “Industrial – Business Park” to “Winona Urban Community”, and identifying the subject lands as OPA No. 162, as shown on the attached Schedule “B” to this Amendment.
- b) Schedule “A-2” – Winona Urban Community Secondary Plan, be amended by incorporating a portion of the subject lands into the “Winona Urban Community District Boundary”, designating a portion of the lands as “Low Density Residential” and “Medium Density Residential”, and redesignating a portion of the lands from “Low Density Residential” to “Medium Density Residential” and identifying the subject lands as OPA No. 162, as shown on the attached Schedule “C” to this Amendment.

Implementation:

An implementing Zoning By-law Amendment and Draft Plan of Subdivision will give effect to this Amendment.







Attachment "2"

BY-LAW

**To Amend Zoning By-law No. 05-200,
Respecting the Property Located at 1187, 1199 and 1211 Barton Street, Stoney
Creek**

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

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Council of the City of Hamilton, in adopting Item 12.2 of Report 10-014 of the Economic Development and Planning Committee at its meeting held on the 15th day of June, 2010, recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

AND WHEREAS the Ontario Municipal Board has issued an Order that Zoning By-law 05-200, be amended as hereafter provided;

AND WHEREAS this by-law will be in conformity with the Official Plan of the City of Hamilton (formerly the City of Stoney Creek Official Plan), approved by the Minister under the Planning Act on May 12, 1986, upon approval of Official Plan Amendment No. 162;

NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. That Map No. 1258 and 1311 of Schedule "A" to Zoning By-law No. 05-200, is amended by incorporating additional Conservation/Hazard Land (P5) Zone boundaries for the applicable lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A";
2. 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.

Attachment "3"

BY-LAW

To Amend Zoning By-law No. 3692-92 (Stoney Creek)

Respecting the Property Located at 1187, 1199, 1211, 1217, 1227 and 1239 Barton Street, Stoney Creek

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 Stoney Creek" 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 Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8th day of December, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1994;

AND WHEREAS the Council of the City of Hamilton, in adopting Item 12.2 of Report 10-014 of the Economic Development and Planning Committee, at its meeting held on the 15th day of June, 2010, recommended that Zoning By-law No. 3692-92 (Stoney Creek) be amended as hereinafter provided;

AND WHEREAS the Ontario Municipal Board has issued an Order that Zoning By-law No. 3692-92, be amended as hereafter provided;

AND WHEREAS this by-law will be in conformity with the Official Plan of the City of Hamilton (formerly the City of Stoney Creek Official Plan), approved by the Minister under the Planning Act on May 12, 1986, upon approval of Official Plan Amendment No. 162;

NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. That Map No. 3 of Schedule "A", appended to and forming part of By-law No. 3692-92 (Stoney Creek), as amended, is hereby further amended by:

- (a) Zoning the lands comprised in "Block 1" to the Multiple Residential "RM2-24" Zone;
- (b) Zoning the lands comprised in "Block 2" to the Single Residential "R3-30" Zone;
- (c) Zoning the lands comprised in "Block 3" to the Multiple Residential "RM2-24" Zone;
- (d) Zoning the lands comprised in "Block 4" to the Single Residential "R3-30" Zone;
- (e) Zoning the lands comprised in "Block 5" to the Multiple Residential "RM2-21" Zone;
- (f) Zoning the lands comprised in "Block 6" to the Multiple Residential "RM2-21" Zone;
- (g) Zoning the lands comprised in "Block 7" to the Single Residential "R3-30" Zone;
- (h) Zoning the lands comprised in "Block 8" to the Single Residential "R2" Zone;
- (i) Zoning the lands comprised in "Block 9" to the Small Scale Industrial "MS" Zone;
- (j) Zoning the lands comprised in "Block 10" to the General Industrial "MG" Zone; and,
- (k) Zoning the lands comprised in "Block 11" to the General Industrial (Holding) "MG-13(H)" Zone;

the extent and boundaries of which are shown on plans hereto annexed as Schedules "A1" and "A2".

2. That Subsection 6.4.7, “Special Exemptions”, of Section 6.4 Single Residential “R3” Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, “R3-30”, as follows:

**“R3-30” 1211, 1217, 1227 and 1239 Barton Street, Schedule “A”, Map
No. 3**

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e) and (g) of Subsection 6.4.3 of the Single Residential “R3” Zone, on those lands zoned “R3-30” by this By-law, the following shall apply:

- (a) Minimum Lot Area: 250 square metres, except 270 square metres for a corner lot

- (b) Minimum Lot Frontage: 10 metres

- (c) Minimum Front Yard: 4.5 metres to the dwelling, except
6.0 metres to the garage

- (d) Minimum Side Yard: 1.2 metres, except:
 - 1. 0.6 metres on the side of the dwelling with an attached garage;

2. On a corner lot, the minimum side yard abutting the flankage street shall be 2.4 metres, except that an attached garage which fronts on the flankage street shall not be located within 6.0 metres of the flankage street line.

(e) Minimum Rear Yard: 7.0 metres

(g) Maximum Lot Coverage: N/A

In addition to the regulations of Subsection 4.19 “Yard Encroachments”, the following encroachments shall be permitted:

- (a) Covered porches may project into any required front yard a distance of not more than 3.0 metres and 1.8 metres for a flankage yard;
- (b) Bay windows either with or without foundations may project into any required front, rear, or flankage yards a distance of not more than 0.9 metres; and,
- (c) Stairs may project into any required front yard a distance of not more than 4.5 metres:

3. That Subsection 6.9.6, “Special Exemptions”, of Section 6.9 Multiple Residential “RM2” Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, “RM2-21”, as follows:

“RM2-21” 1211, 1217, 1227 and 1239 Barton Street, Schedule “A”, Map No. 3

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e), (f), (g) and (i) of Subsection 6.9.3 of the Multiple Residential “RM2” Zone, on those lands zoned “RM2-21” by this By-law, the following shall apply:

- (a) Minimum Lot Area:
 - Interior Unit 120 square metres
 - End Unit 145 square metres
 - Corner Unit 185 square metres
- (b) Minimum Lot Frontage: 4.45 metres per dwelling unit
- (c) Minimum Front Yard: 4.5 metres to the dwelling, except
6.0 metres to the garage
- (d) Minimum Side Yard:
 - End Unit 1.2 metres
 - Corner Unit 2.4 metres, except
6.0 metres of the flankage street line to
an attached garage, which fronts on a
flankage street

- (e) Minimum Rear Yard: 7.0 metres.
- (f) Minimum Privacy Area: 25 square metres
- (g) Maximum Landscaped Open Space: N/A
- (i) Maximum Lot Coverage: N/A

In addition to the regulations of Subsection 4.19 “Yard Encroachments”, the following encroachments shall be permitted:

- (a) Covered porches may project into any required front yard a distance of not more than 3.0 metres and 1.8 metres for a flankage yard;
- (b) Bay windows, either with or without foundations, may project into any required front, rear, or flankage yards a distance of not more than 0.9 metres; and,
- (c) Stairs may project into any required front yard a distance of not more than 4.5 metres.

4. That Subsection 6.9.6, “Special Exemptions”, of Section 6.9 Multiple Residential “RM2” Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, “RM2-24”, as follows:

“RM2-24” 1211, 1217, 1227 and 1239 Barton Street, Schedule “A”, Map No. 3

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e), (f), (g) and (i) of Subsection 6.9.3 of the Multiple Residential “RM2” Zone, on those lands zoned “RM2-24” by this By-law, the following shall apply:

- (a) Minimum Lot Area:
 - Interior Unit 120 square metres
 - End Unit 145 square metres
 - Corner Unit 185 square metres
- (b) Minimum Lot Frontage: 4.45 metres per dwelling unit
- (c) Minimum Front Yard: 4.5 metres to the dwelling, except 6.0 metres to the garage
- (d) Minimum Side Yard:
 - End Unit 1.2 metres, except
7.5 metres where a lot abuts an
Industrial zone
 - Corner Unit 2.4 metres, except
6.0 metres of the flankage street line to
an attached garage, which fronts on a
flankage street
- (e) Minimum Rear Yard: 7.5 metres

- (f) Minimum Privacy Area: 25 square metres
- (g) Maximum Landscaped Open Space: N/A
- (i) Maximum Lot Coverage: N/A

In addition to the regulations of Subsection 4.19 “Yard Encroachments”, the following encroachments shall be permitted:

- (a) Covered porches may project into any required front yard a distance of not more than 3.0 metres and 1.8 metres for a flankage yard;
- (b) Bay windows, either with or without foundations, may project into any required front, rear, or flankage yards a distance of not more than 0.9 metres; and,
- (c) Stairs may project into any required front yard a distance of not more than 4.5 metres.

In addition to the regulations of Section 6.9.3 “Zone Regulations”, a landscaped strip having a minimum width of 3.0 metres shall be provided and thereafter be maintained adjacent to every portion of any lot that abuts an Industrial zone.

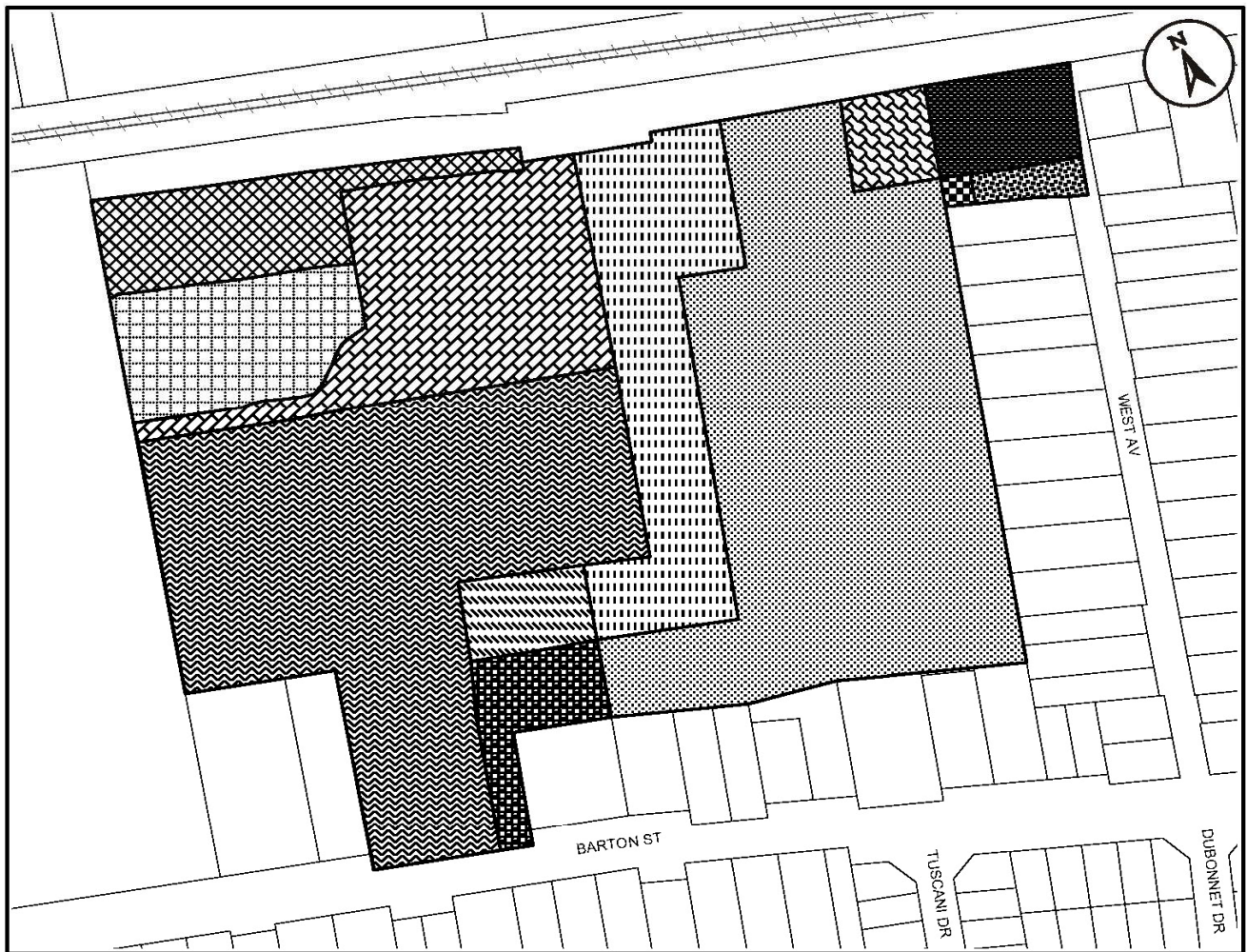
Notwithstanding the provisions of Section 6.1.4 Paragraph (a) with respect to any yard that abuts an Industrial zone, accessory buildings or structures shall be permitted a minimum distance of 7.5 m from any lot line that abuts an Industrial zone.

5. That Subsection 9.5.7, "Special Exemptions", of Section 9.5 General Industrial "MG" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "MG-13(H)", as follows:

"MG-13(H)" 1187, 1199, and 1211 Barton Street, Lands located north of the proposed Arvin Avenue Extension, Schedule "A", Map No. 3

In addition to the provisions of Section 3.8 of this By-law, the (H) symbol may be removed from those lands zoned "MG- 13(H)" by this By-law at such time as the size, shape and configuration of the stormwater management pond has been determined to the satisfaction of the Director of Development Engineering.

6. 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 Single Residential "R3" Zone, and the Multiple Residential "RM2" Zone provisions, subject to the special requirements referred to in Sections 2, 3 and 4.



This is Schedule "A" to By-Law No. 10-

Passed the day of, 2010

Clerk

Mayor

Schedule "A1"

Map Forming Part of
By-Law No. 10-_____

to Amend By-law No. 3692-92

Subject Property

1187, 1199, 1211, 1217, 1227 and 1239 Barton Street



Block 1 - Lands to be zoned Multiple Residential "RM2-24" Zone



Block 2 - Lands to be zoned Single Residential "R3-30" Zone



Block 3 - Lands to be zoned Multiple Residential "RM2-24" Zone



Block 4 - Lands to be zoned Single Residential "R3-30" Zone



Block 5 - Lands to be zoned Multiple Residential "RM2-21" Zone



Block 6 - Lands to be zoned Multiple Residential "RM2-21" Zone

Scale:
N.T.S.

File Name/Number:
ZAC-05-128

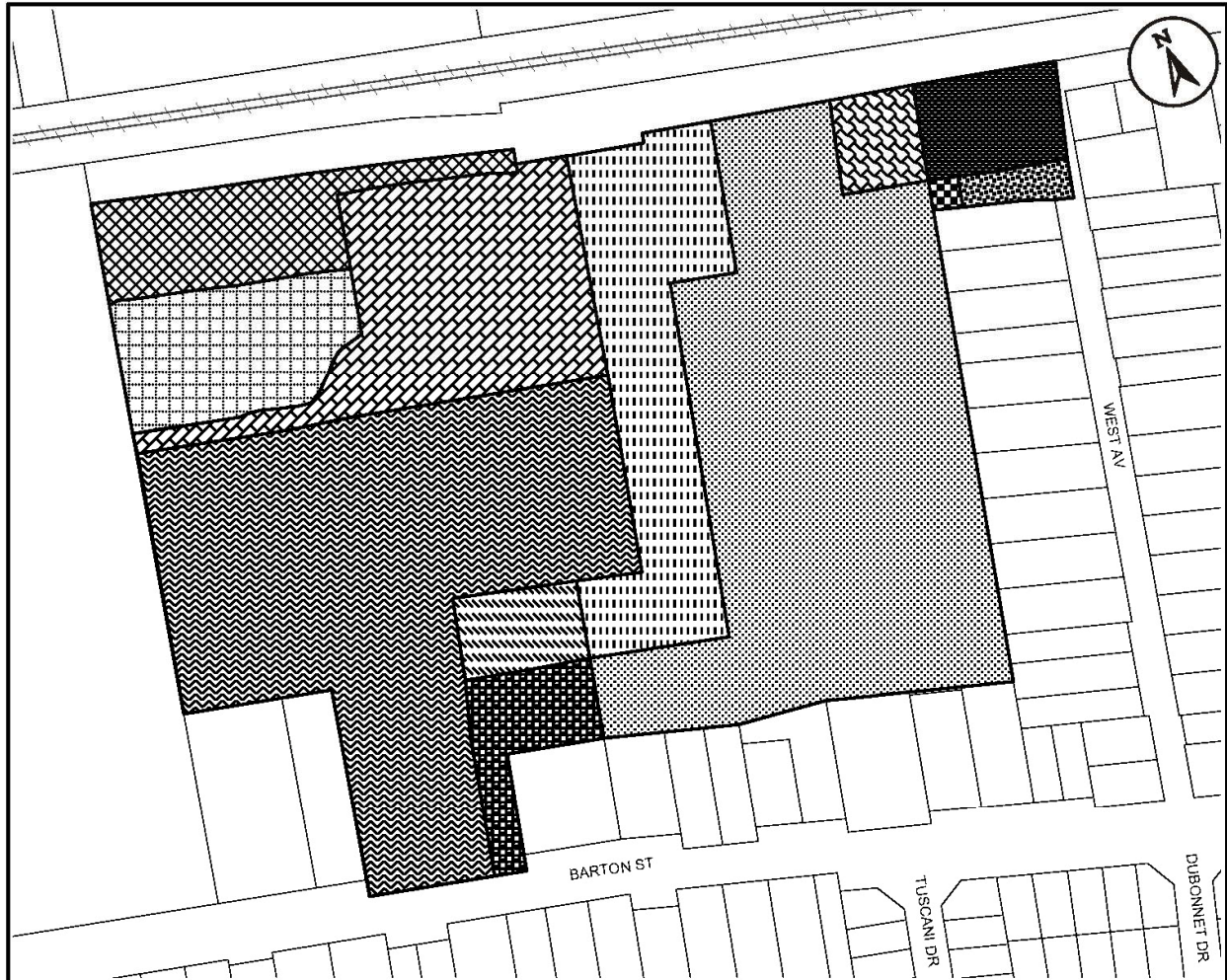
Date:
May 13, 2010

Planner/Technician:
DY/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT



This is Schedule "A" to By-Law No. 10-
 Passed the day of, 2010

 Clerk

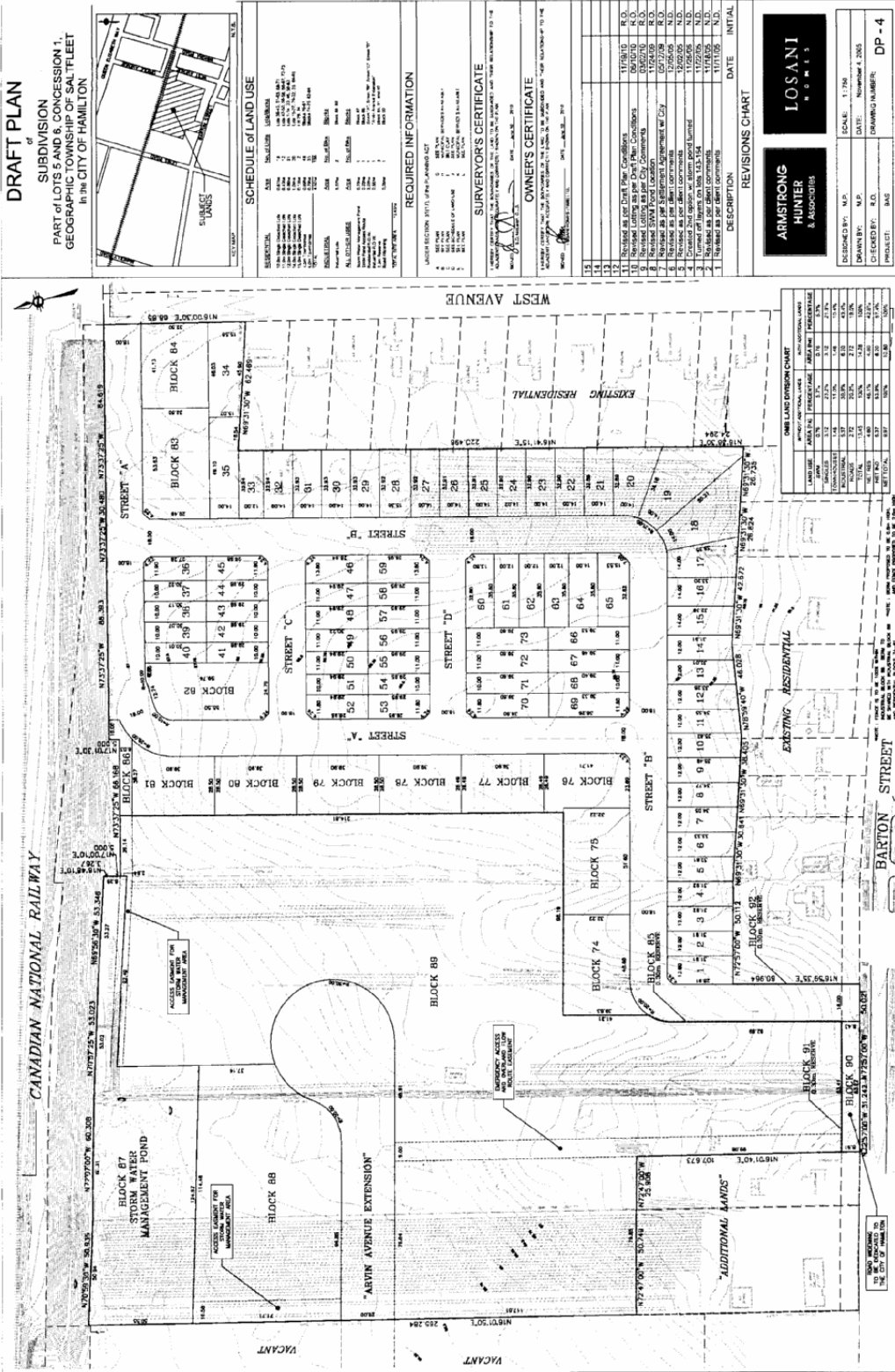
 Mayor

Schedule "A2"
 Map Forming Part of
 By-Law No. 10-_____
 to Amend By-law No. 3692-92

- Subject Property**
 1187, 1199, 1211, 1217, 1227 and 1239 Barton Street
-  **Block 7** - Lands to be zoned Single Residential "R3-30" Zone
 -  **Block 8** - Lands to be zoned Single Residential "R2" Zone
 -  **Block 9** - Lands to be zoned Small Scale Industrial "MS" Zone
 -  **Block 10** - Lands to be zoned General Industrial "MG" Zone
 -  **Block 11** - Lands to be zoned General Industrial (Holding) "MG-13(H)" Zone
 -  **Block 12** - Lands subject to By-law No. 05-200

Scale: N.T.S.	File Name/Number: ZAC-05-128	 Hamilton
Date: May 25, 2010	Planner/Technician: DY/AL	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

Attachment "4"



Attachment "5"

Special Conditions of Draft Plan of Subdivision Approval for "Barton Assembly"

1. That this approval apply to "Ridgeview", 25T-200526, prepared by Armstrong Hunter & Associates, and certified by S.D. McLaren, O.L.S., dated June 10, 2010 (revised November 19, 2010), showing seventy three (73) lots for single detached dwellings (Lots 1-73), eleven (11) blocks for street townhouse dwellings (Blocks 74 to 84), two (2) blocks for industrial development (Blocks 88 and 89), one (1) block for stormwater management (Block 87), one (1) block for stormwater access (Block 86), one (1) block for road widening purposes (Block 90), three (3) blocks for 0.3 metres (1 foot) reserves (Block 85, 91 and 92), four new municipal street (Streets "A", "B", "C" and "D") and, the extension of Arvin Avenue, subject to the owner entering into a Standard Form Subdivision Agreement with the City of Hamilton, with the following special conditions.

Planning

2. That, ***the owner shall agree in the Subdivision Agreement***, that Blocks 87, 88, 89 and 90 will be included in the first phase of the draft plan to be registered.
3. That, ***prior to preparation of a subdivision agreement by the City***, the owner/applicant shall provide an addendum to the noise study titled "Revised Environmental Noise and Vibration Impact Study "Ridgeview Subdivision" Part of Lots 5 & 6 Concession 1, Township of Saltfleet Formerly in the City of Stoney Creek, now in the City of Hamilton" dated February 2010 and prepared by dBA Environmental Services, which addresses the items outlined in the peer review letter dated May 5, 2010, and prepared by Jade Acoustics Inc. to the satisfaction of the City of Hamilton, Director of Planning. Should a peer review of the noise study addendum be warranted, all associated costs shall be borne by the owner/applicant and shall be submitted to the satisfaction of the City of Hamilton, Director of Planning.
4. That, ***the owner shall agree in the Subdivision Agreement***, to the following:
 - a) That the acoustical barrier required along the common boundary of the industrial and residential development will be constructed and maintained on the industrial development portion, Block 89.
 - b) To advise purchasers of Block 89 that the acoustical barrier as installed shall be maintained, repaired and replaced at their expense and that any maintenance, repair or replacement shall be with the same material and the same standards as the original.

- c) That prior to building permits being issued for Blocks 74 to 81, the common boundary noise wall will be constructed.
 - d) To advise all purchasers of industrial properties that detailed noise studies will be required at the Site Plan Control Stage and based on the findings of a noise study, there may be limitations on the site layout and building design.
 - e) To advise all purchasers of residential lands, Lot 1 and Blocks 74, 75, 76, 77, 78, 79, 80 and 81, adjacent to industrial lands, Block 89, that the adjacent lands are to be developed for industrial purposes.
 - f) To include warning clauses to address d) and e) above within the standard agreements of purchase and sale or lease for the industrial lands, Block 89 and residential lands, Lot 1 and Blocks 74, 75, 76, 77, 78, 79, 80 and 81 and to provide a copy of the standard agreement to the satisfaction of the City of Hamilton, Director of Planning
5. That, ***prior to the registration of the final plan of subdivision***, the owner shall prepare and submit an Urban Design Brief which demonstrates the architectural design treatments of priority lots, including corner lots, terminus lots and elbow lots, as well as lots facing parks, schools or public open spaces, to the satisfaction of the Manager of Community Planning and Design.
6. That, ***prior to the preparation of a subdivision agreement by the City***, the owner shall prepare and submit a landscape planting plan for Blocks 74, 75, 76, 77, 78, 79, 80, and 81, prepared by a Landscape Architect to the satisfaction of the Director of Planning.

Development Engineering

7. That, ***prior to registration of the final plan of subdivision***, 4.5m x 4.5m daylight triangles or 4.5m radii be established on Lots 1, 36, 45, 46, 52, 53, 59, 60, 69 & 70, and Blocks 76, 82, 83 & 84.
8. That, ***prior to registration of the final plan of subdivision***, Block 90 be dedicated to the City of Hamilton as public highway, by the Owner's certificate on the final plan of subdivision, for road widening on Barton Street.
9. That, ***prior to registration of the final plan of subdivision***, 12m x 12m daylight triangles be established on the final plan of subdivision at the widened limits of both the east and west sides of the intersection of Barton Street and Street "B".
10. That, ***prior to registration of the final plan of subdivision***, the Owner purchase sufficient lands from the abutting owner at #1215 Barton Street to establish the required 12m x 12m daylight triangle at the widened limits of the intersection of Barton Street and the east side of Street "B". The Owner must provide the City with a copy of an appraisal by an accredited appraiser and a

bonafide offer to purchase. If the lands cannot be acquired, the Owner shall provide the City with a current appraisal of the lands required for the daylight triangle and make a cash payment to the City for the value of the land to the satisfaction of the Manager of Real Estate.

11. That, ***prior to registration of the final plan of subdivision***, a 0.30m reserve be established on the final plan of subdivision at the widened limits of the Barton Street road allowance adjacent to Block 89.
12. That, ***prior to registration of the final plan of subdivision***, a 0.30m reserve be established on the final plan of subdivision along the east side of Street "B" from the widened limit of the Barton Street road allowance northerly to the south limit of Lot 1.
13. That, ***prior to registration of the final plan of subdivision***, the Owner shall at his expense, design and construct the stormwater management facility to be located on Block 87, in accordance with the City's current Development Charges By-law and Financial Policies for Development, to the satisfaction of the Director of Development Engineering.
14. That, ***prior to registration of the final plan of subdivision***, the Owner agree in writing to secure their proportionate share, less over-sizing, of the estimated cost of future storm sewers on Barton Street adjacent to Block 89 and Street "B" of the draft plan, to the satisfaction of the Director of Development Engineering.
15. That, ***prior to registration of the final plan of subdivision***, the Owner pay their proportionate share for the future urbanization of Barton Street adjacent to Block 89 and West Avenue adjacent to Lot 34 and Block 84 based on the City's "New Roads Servicing Rate" in effect at the time of payment, the satisfaction of the Director of Development Engineering.
16. That, ***prior to registration of the final plan of subdivision***, the Owner shall submit the necessary transfer deeds to the City's Legal Department to convey Block 87 of the draft plan to the City for the stormwater management facility.
17. That, ***prior to registration of the final plan of subdivision***, sanitary sewers, storm sewers, watermains and road access (Arvin Avenue Extension) from Lewis Road to the westerly boundary of the subject lands shall be available to service the lands of the draft plan or alternatively, the Owner acquire the necessary land or easements and pay the full cost, less over-sizing, to construct sanitary sewers, storm sewers, watermains and road access to service the lands of the draft plan.

18. That, ***prior to registration of the final plan of subdivision***, the Owner agree in writing that Blocks 88 and 89 may not be developed until such time that the Arvin Avenue Extension has been constructed with full municipal services from Lewis Road easterly to the subject lands.
19. That, ***prior to registration of the final plan of subdivision***, the Owner transfer to the City a minimum 9.0m storm sewer easement over part of Block 88 from the Arvin Avenue Extension to the Stormwater Management Facility Block 87.
20. That, ***prior to registration of the final plan of subdivision***, the Owner transfer a suitable easement to the City over part of Block 89 from Barton Street to the Arvin Avenue Extension for the purpose of an emergency access route and an overland flow route, including a 1.5m high chainlink fence along both sides of the easement and bollards at both ends of the easement, to the satisfaction of the Director of Development Engineering.
21. That, ***prior to registration of the final plan of subdivision***, that the alignment of the Arvin Avenue Extension within the subject draft plan shall match the alignment of Arvin Avenue to the west.
22. That, ***prior to registration of the final plan of subdivision***, the Owner pay to the City any outstanding commutation charges assessed against the lands in the draft plan, which amount represents the Owner's share of the Winona Master Drainage Plan in accordance with a sewer rate established under By-law No. 4162-95.
23. That, ***prior to registration of the final plan of subdivision***, the Owner agrees to:
 - i) Verify that SWM Facility Block 87 is adequately sized to accommodate the SWM Facility designed in accordance with Ministry of Environment (MOE) & City of Hamilton guidelines and the recommendations of the Stormwater Management Guidelines and the approved Stormwater Quality Management Strategy – Community of Stoney Creek Master Plan and the Winona Urban Area Master Drainage Plan and the SCUBE Subwatershed Study and accommodate the external drainage areas for adjacent development. The Owner further agrees to dedicate more lands to the City for the SWM Facility if it is required, to the satisfaction of the Director of Development Engineering; and,
 - ii) Inspect and monitor the storm water management facility upon commencement of construction or pre-grading of the land; and,

- iii) Create an operation and maintenance manual and keep detailed logs concerning storm water management facility performance and maintenance, including costs for cleaning and removal of sediment and submit such logs to the City during pre-grading and construction activities in accordance with the operational manual; and,
 - iv) Construct, operate and maintain at the Owner's expense, the storm water management facility, in a manner acceptable to the City, including any changes to conditions of the MOE's approval, throughout servicing of all stages of draft plan registration and development of all registered lots and blocks, or until such time as determined by the Director of Development Engineering; and,
 - v) Remove sediment from the storm water management facility attributed to development, carry out a bathymetric survey and verify volumetric capacity of the storm water management facility, prior to release of the Owner's operation and maintenance responsibilities for the storm water management facility; and,
 - vi) Submit an operation and maintenance manual as per City of Hamilton Operation and Maintenance Report for Stormwater Management Facilities (May 2009) for approval by the Director of Development Engineering, prior to release of the Owner's operation and maintenance responsibilities for the storm water management facility.
24. That, ***prior to registration of the final plan of subdivision***, Street "A" align center line to center line with existing Pettit Street on the east side of West Avenue, to the satisfaction of the Director of Development Engineering.
25. That, ***prior to registration of the final plan of subdivision***, the Owner shall implement the recommendations of the Noise Study and any associated addendum, to the satisfaction of the Director of Development Engineering.
26. That, ***prior to registration of the final plan of subdivision***, the Owner agrees that any portion of the noise wall required adjacent to the east and south sides of Block 89 from Block 86 to Block 90 be constructed entirely within Block 89.
27. That, ***prior to registration of the final plan of subdivision***, the bends in the property line for Street "B" in the area of Lots 15 to 20 and 65, be established to a 21m outer radius and a 5m x 5m inner daylight triangle.
28. That, ***prior to servicing***, grading within Blocks 74 to 81 inclusive and Block 89 must not exceed 3:1 slopes within the designated buffer strip area.

29. That, **prior to servicing**, the Owner submit a detailed Stormwater Management Report. Sufficient back-up information will be required to verify that the area designated for the SWM facility will accommodate the proposed facility designed in accordance with current/applicable Stormwater Management Guidelines and the approved Stormwater Quality Management Strategy – Community of Stoney Creek Master Plan and the Winona Urban Area Master Drainage Plan and the SCUBE Subwatershed Study to the satisfaction of the Director of Development Engineering and all other appropriate agencies.
30. That, **prior to servicing**, in relation to the sanitary sewer design at the design engineering stage the Owner is required to submit a Water Usage and Wastewater Generation Study to verify system capacity based on Part 8 Sewage Systems of the Ontario Building Code to the satisfaction of the Director of Development Engineering.
31. That, **prior to servicing**, at the Drinking Water Works Permit stage the Owner prepare a Water Servicing Study demonstrating how residential and fire flow demands will be accommodated, to the satisfaction of the Director of Development Engineering. The report shall also focus on the following issues:
 - a) Tabularize the expected occupancy;
 - b) Generate residential and institutional water demand and fire flow calculations for this development;
 - c) Demonstrate how the proposal fits with GRIDS numbers;
 - d) Confirm the water servicing layout based on field information and hydraulic models;
 - e) Provide the new hydrant locations on the Water Distribution Plan.
32. That, **prior to servicing**, the Owner prepare an on-street parking plan for Streets “A”, “B”, “C” & “D” based on the premise of achieving on-street parking for 40% of the total number of single family residential units to the satisfaction of the Director of Development Engineering.
33. That, **prior to servicing**, the Owner include provision for construction of municipal concrete sidewalks as follows:

Street “A” (north/south leg):	on the east side
Street “A” (east/west leg):	on the south side
Street “B” (both north/south legs):	on the east side
Street “B” (east/west leg):	on the south side
Street “C”:	on the south side
Street “D”:	on the south side
Arvin Avenue Extension:	No sidewalks required

34. That, **prior to servicing**, the Owner indicates all driveway locations on the engineering drawings for all lots and that no driveway shall be within a daylight triangle and further that the driveways for the following lots be established as follows: Lots 1, 52, 53, 69 & 70 on the east side of the lot, Lots 36, 45, 46, & 59, on the west side of the lot, Lot 65 on the north side, Lot 60 on the south side of the lot, the most southerly unit of Block 76 on the north side of the lot and the most westerly unit of Block 83 on the east side of the lot and the most easterly unit of Block 84 on the west side of the lot.
35. That, **prior to servicing**, the Owner is required to relocate, as required, all affected utility poles, hydrants, pedestals, hydro vaults, etc. on Barton Street and West Avenue, at their expense, to the satisfaction of the Director of Development Engineering.
36. That, **prior to servicing**, the Owner agrees to provide in writing, to the satisfaction of the Director of Development Engineering, a plan or procedure for dealing with issues concerning dust control and street cleaning (external roads included) throughout construction within the subdivision, including homes. This document will also include, first point of contact, a schedule for regular cleaning of streets that is specific to the methods to be used, the source of water, and the contractor or agent to be used to undertake the works as well as the contractor/agent contact information so that the City can direct works be completed as necessary.
37. That, **prior to servicing**, the Owner include in the engineering design for the draft plan lands removal of all dead or diseased trees within the City's road allowance as required by reconstruction on existing streets (i.e. Street "A" at West Avenue and Street "B" at Barton Street) and pay all costs for replacement of such street trees.
38. That, **prior to servicing**, the Owner provide sufficient lands to the City over Block 86 and Block 89 from Street "A" westerly to Block 87 to facilitate an easement for storm sewer purposes.
39. That, **the owner shall agree in the Subdivision Agreement**, to install and maintain a chain link fence of minimum 1.83 metre height between Block 81 and Block 86 and along the mutual property boundary between Street A and the City of Hamilton lands to the north.

Traffic

40. That, **prior to the registration of the final plan of subdivision**, a detailed design of the 'Emergency Access' be prepared by the Owner to the satisfaction of the Manager of Traffic Engineering. No portion of the access can encroach at

the Barton Street road allowance limit onto the adjacent residential property to the west. A width of 6.0 m is recommended with a minimum radius of 5.0 m.

41. That, ***prior to the registration of the final plan of subdivision***, the Owner agree in writing that access to Barton Street shall be provided only from one developable industrial lot with frontage onto Barton Street and not from the entire industrial Block 89. As the site plan stage an access location will be confirmed that minimizes impacts on the adjacent existing and proposed residential properties.
42. That, ***prior to the registration of the final plan of subdivision***, the Owner agree that the vehicular access location to the easterly unit of Block 84 must be located outside of the daylight triangle at Street 'A' at West Avenue.
43. That, ***prior to servicing***, the driveway locations for Lots 16-21 at the bend in the Street 'B' be located to the satisfaction of the Manager of Traffic Engineering. The driveway must be shown on approved engineering drawings. The applicant must ensure that the accesses to each lot are maintained within the limits of the property frontage and not encroach over onto neighboring lots in the corner areas.

Hamilton Conservation Authority

44. That, ***prior to preliminary grading or servicing***, the Owner prepare and implement an erosion and sediment control plan for the subject property, to the satisfaction of the Hamilton Region Conservation Authority. The approved plan should include the following notes:
 - a) All erosion and sediment control measures shall be installed prior to development and maintained throughout the construction process, until all disturbed areas have been re-vegetated;
 - b) All erosion and sediment control measures shall be inspected after each rainfall, to the satisfaction of Authority staff;
 - c) Any disturbed area not scheduled for further construction within forty-five (45) days will be provided with a suitable temporary mulch and seed cover within seven (7) days of the completion of that particular phase of construction; and,
 - d) All disturbed areas shall be re-vegetated with permanent cover immediately following completion of construction.

45. That, ***prior to preliminary grading or servicing***, the Owner prepare and implement a Stormwater Management Plan for the subject property, to the satisfaction of the Hamilton Region Conservation Authority. The approved plan shall address stormwater quantity and quality issues, and will ensure that current Provincial drainage and stormwater quality guidelines are implemented.
46. That, ***prior to preliminary grading or servicing***, the Owner prepare and implement a lot grading plan, to the satisfaction of the Hamilton Conservation Authority.

Forestry

47. That, ***prior to registration of the final plan of subdivision***, the Owner submit a Street Tree Planting Plan, prepared by a landscape architect to the satisfaction of the Forestry and Horticulture Section.

Parking Services

48. That, ***the owner shall agree in the Subdivision Agreement***, to include a clause within all agreements of purchase and sale for the subject lands, advising purchasers that due to the close proximity of Winona Park, that the subject lands will likely be impacted in terms of accessibility, traffic and parking related problems during special events such as the Winona Peach Festival.

Finance

49. That, ***prior to the registration of the final plan of subdivision***, the owner shall pay the required commutation amount for Local Improvement Charges to the Finance and Corporate Services Department.

Canadian National Railway

50. That, ***the owner shall agree in the Subdivision Agreement***, to the following:
 - a) That the following clause shall be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 300 m of the railway right-of-way:

“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future, including the possibility that the railway or its assigns

or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way."

- b) That the owner shall enter into an Agreement stipulating how CN's concerns will be resolved and will pay CN's reasonable costs in preparing and negotiating the agreement.
- c) The Owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.

Canada Post

51. That, ***the owner shall agree in the Subdivision Agreement***, to complete to the satisfaction of the Director of Engineering of the City of Hamilton and Canada Post, the following:
- a) include on all offers of purchase and sale, a statement that advises the prospective purchaser:
 - i) that the home/business mail delivery will be from a designated Centralized Mail Box.
 - ii) that the developers/owners be responsible for officially notifying the purchasers of the exact Centralized Mail Box locations prior to the closing of any home sales.
 - b) the owner further agrees to:
 - i) work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the subdivision.
 - ii) install a concrete pad in accordance with the requirements of, and in locations to be approved by, Canada Post to facilitate the placement of Community Mail Boxes.

- iii) identify the pads above on the engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of subdivision.
 - iv) determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the location of the centralized mail facilities on appropriate maps, information boards and plans. Maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility locations.
- c) Canada Post's multi-unit policy, which requires that the owner/developer provide the centralized mail facility at their own expense, will be in effect for buildings and complexes with a common lobby, common indoor or sheltered space.

Horizon Utilities

52. That, **prior to the registration of the final plan of subdivision**, the owner shall enter into a Residential Subdivision Development Agreement with Horizon Utilities, which outlines the detailed costs and requirements for servicing within the subject lands.

Hamilton-Wentworth District School Board

53. That, ***the owner shall agree in the Subdivision Agreement***, to:
- a) At their expense, place adequate signage on the site, based on Board specifications, advising that students from this development are likely to be redirected to schools outside of the area with available capacity at that students may be transported as governed by the Board Transportation Policy.
 - b) To include in all agreements of purchase and sale, notice to purchasers advising that students from this development are likely to be redirected to schools outside of the area with available capacity and that students may be transported as governed by the Board Transportation Policy.

NOTES:

Cost Sharing

1. Cost sharing for any required oversizing of the Arvin Avenue Extension will be in accordance with the City's current Financial Policies for Development.

2. Cost sharing for the proposed Stormwater Management Facility will be in accordance with the City's current Development Charges By-law and Financial Policies for Development.

Land Acquisition

3. Prior to Ontario Municipal Board Approval, Losani Homes acquired and subsequently incorporated the former City owned lands into the subject subdivision and therefore the condition that "the owner shall acquire the City owned lands located adjacent to Blocks 78, 79, 80, 81, 82, 83 and 84, at a fair market value, to the satisfaction of the Director of Planning." was subsequently deleted from the conditions of draft plan approval, as adopted by City Council.