

ISSUE DATE:

July 18, 2008



PL070395

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

IN THE MATTER OF subsection 17(24) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

Appellant: Silverwood Homes Limited
Subject: Proposed Official Plan Amendment No. 109
Municipality: City of Hamilton
OMB Case No.: PL070395-O070054
OMB File No.: PL080150

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

Appellant: Silverwood Homes Limited
Subject: Proposed Plan of Subdivision No. 25T-200621
Municipality: City of Hamilton
Property Address/Description: Part of Lot 11, Concession 4
OMB Case No.: PL070395-O070054
OMB File No.: PL080150

Silverwood Homes Limited 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 or neglect to enact a proposed amendment to Zoning By-law ZAC-07-39 of the City of Hamilton to rezone lands respecting Part of Lot 11, Concession 4 to rezone the land from Agricultural to Residential to permit the development of a subdivision.

OMB Case No.: PL070395-O070054
OMB File No.: PL080146

APPEARANCES:

Parties

City of Hamilton
Silverwood Homes
MC2 Homes
Sun-Canadian Pipe-Line
City of Burlington
Landmart Realty Corp.

Counsel

A. Zuidema
M. McQuaid
R. K. Webb
R. Coburn
P. Harrington
R. Cheeseman

Amedeo DiMarco

A. Platt (did not appear)

**DECISION DELIVERED BY J. de P. SEABORN AND PROCEDURAL
ORDER OF THE BOARD**

On July 11, 2008 the Board convened a Telephone Conference Call, the purpose of which was to finalize the provisions of a Procedural Order to govern the organization and conduct of the hearing. Attachment "1" is the Procedural Order which the Board issues with the consent of the parties. The Procedural Order has been re-circulated by Mr. McQuaid and consent has been obtained from Counsel.

Mr. Cheeseman raised a concern that while the issues are allocated for organizational purposes to individual parties, other parties may raise the same issue. Counsel agreed that the way in which the issues are set out is not intended to restrict any party from addressing an issue, as long as it appears somewhere on the Issues List. Mr. Coburn reiterated his concern that the pipeline issue be addressed during the first week of the hearing, given he has other commitments before the Board commencing November 3, 2008. The Board will be flexible in this regard and to the extent possible accommodate Mr. Coburn, and other Counsel, as the hearing progresses.

The Board confirms a status hearing by way of Telephone Conference Call is set for September 17, 2008 at 9:00 AM. The hearing is set to commence October 27, 2008. Each of these dates were confirmed, and notice given, in the Board's disposition issued June 25, 2008. I am seized of the status hearing in September, but not seized of the hearing.

This is the Order of the Board.

"J. de P. Seaborn"

J. de P. SEABORN
VICE CHAIR

ATTACHMENT "1"**ONTARIO MUNICIPAL BOARD**

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OMB File No.:	PL080167

PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on Monday, October 27, 2008 at 10:00 a.m. at OMB Hearing Room 6, McMaster Learning Centre, 50 Main Street East, Main Floor, Hamilton, Ontario.

3. The length of the hearing will be about 20 days.

4. The Board will convene a status hearing by telephone conference (the "**September Status Hearing**") on Wednesday, September 17, 2008 at 9:00 a.m.
5. The parties identified at the prehearing conference are listed in Attachment 1 to this Order. No lay person participants or lay witnesses have been identified during the course of the prehearing conference.
6. The Issues for the parties are set out in the Consolidated Issues List attached as Attachment 2. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.
7. Any person intending to participate in the September Status Hearing should provide a telephone number to the Board as soon as possible (before the September Status Hearing.). Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

8. Expert witnesses in the same field shall have a meeting on or before **Friday, October 10, 2008** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the Clerk of the City of Hamilton on or before **Friday, October 17, 2008**.
9. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk of the City of Hamilton a list of the witnesses and the order in which they will be called. This list must be delivered on or before **Friday, September 5, 2008**.
10. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12, below. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section 12, below.
12. On or before **Wednesday, September 24, 2008**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Clerk of the City of Hamilton.
13. On or before **Monday, October 20, 2008**, the parties shall provide copies of their visual evidence to all of the other parties. Large exhibits, or if a model will be used, all parties will have the opportunity to view them on **Monday, October 20, 2008**, in Hearing Room 6, McMaster Learning Centre, 50 Main Street East, Main Floor, in the City of Hamilton.

14. Parties may provide to all other parties and file with the Clerk of the City of Hamilton a written response to any written evidence within 7 days after the evidence is received.

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board. *(See Rules 34 and 35 of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)*

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or electronic mail ("**e-mail**") or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. Where documents are delivered by e-mail, the party delivering the document must obtain from each recipient a confirmation of receipt. The Board may require proof of receipt of e-mails in the event of a dispute over the delivery of the document. Any documents filed with the Board by e-mail are to be in Portable Document Format (.pdf), generated by a word processing document. Where files are unreasonably large for conveyance by e-mail, the parties are to file their electronic copies with the Board by way of a CD or other appropriate electronic data storage device.

19. The order of evidence for each phase of the hearing shall be as follows:

- (i) Silverwood Homes Limited (the "**Appellant**");
- (ii) All parties in support of the Appellant (if any);
- (iii) City of Hamilton ("**Hamilton**");
- (iv) All parties in support of Hamilton;
- (v) Any reply evidence by the Appellant.

20. The Ontario Municipal Board file number is to be clearly marked on all documents, visual, written or otherwise, to be filed with the Board.

21. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

**This Member is not seized.
So orders the Board.**

ATTACHMENT 1

LIST OF PARTIES

PARTIES

1. Silverwood Homes Limited
2. City of Hamilton
3. MC2 Homes
4. Sun-Canadian Pipe Line Company
5. City of Burlington
6. Amedeo DiMarco
7. Landmart Realty Corp.

ATTACHMENT 2

CONSOLIDATED ISSUES LIST

SILVERWOOD HOMES LIMITED ("SILVERWOOD")

A. Issues respecting Sun-Canadian Pipe Line Company Limited ("Sun-Canadian") and the City of Hamilton ("Hamilton") arising from the existing oil pipeline easement

1. Whether the proposed Utility Corridor designation and related policies under appeal in Official Plan Amendment No. 109 (the "**Secondary Plan**") (respecting utilities and the position of Sun-Canadian) represent a designation for conservation, recreational or the attaining of a larger public purpose benefit such that a policy should be included requiring Hamilton and/or Sun-Canadian (the private company on whose behalf Hamilton is acting) to acquire Silverwood's remaining interest in the pipeline easement lands within a reasonable period of time before the Utility Corridor designation and relevant policies in the Secondary Plan (as well as any resulting "Utility Corridor" type zoning) are approved?
2. In the event the pipeline easement lands are designated and zoned as Utility Corridor, restricting the use for natural open space or amenity purposes and thereby preventing the incorporation of such lands into the backyards of the proposed adjoining lots for use for residential purposes, how should the Secondary Plan policies be amended requiring the lands subject to the pipeline easement be included as park land contribution under the *Planning Act* ?
3. In the absence of the incorporation of an acquisition program in the Secondary Plan, or in the alternative a credit for park land contribution under the *Planning Act*, is the effect of the Utility Corridor designation and policies supported by Hamilton, acting on behalf of Sun-Canadian, a down designation thereby creating a regulatory taking?
4. What status should the Ontario Municipal Board ("**OMB**") assign to "Guidelines for Development in the Vicinity of Oil and Gas Pipeline Facilities (P1-98/02)?"
5. What modifications are necessary to the appealed provisions of the Secondary Plan to permit residential lots to extend to the western limit of the pipeline easement?

B. Issues arising from Hamilton

6. Does Silverwood's proposed draft plan of subdivision depicted on the Composite Plan (Exhibit 8) (the "**Silverwood Draft Plan**") and implementing zoning by-law conform to the Places to Grow, Provincial Policy Statement, Official Plans of the

former Regional Municipality of Hamilton and former City of Flamborough, and the approved provisions of the Secondary Plan?

7. Does the proposed zoning by-law represent good planning and does it appropriately implement the Silverwood Draft Plan and the approved provisions of the Secondary Plan?
8. What are appropriate conditions of draft plan approval for the Silverwood Draft Plan?
9. Does the Silverwood Draft Plan appropriately address section 51(24) of the *Planning Act*?
10. Does the Silverwood Draft Plan depicted on the Composite Plan appropriately integrate with abutting lands to the east up to Borer's Creek and does this Composite Plan provide a reasonable response in implementing the Secondary Plan in respect of the Neighbourhood Park and road pattern?
11. Are the proposed lots backing onto the Neighbourhood Park to the north appropriate given the three sided road frontage proposed for the Neighbourhood Park as shown on the Composite Plan?
12. Will the proposed maximum 2.0 ha. Neighbourhood Park shown on the Composite Plan appropriately address Hamilton's identified criteria to provide for a Neighbourhood Park as "square as possible" to facilitate flexibility for parks planning purposes?
13. Is Hamilton entitled, in accordance with the *Planning Act*, to pre-designate the Neighbourhood Park larger than necessary to maximize the parkland dedication in land terms over the entire Secondary Plan thereby providing a larger park size west of Borer's Creek?
14. Should the proposed Utility Corridor designation be subject to a dual designation and zoning (Utility Corridor/LD1) and should the policies of the Secondary Plan under appeal be amended to permit the acquisition of the lands by Hamilton, any other public authority, or Sun-Canadian within a reasonable period of time, failing which the lands can be used for residential purposes?
15. Should the lands owned by Silverwood, but subject to the oil pipeline easement, be included in calculating net density?
16. Is it appropriate that the lands owned by Silverwood, that are subject to the oil pipeline easement, be subdivided and incorporated into the residential lots and, if so, what are the appropriate zoning regulations and conditions of draft approval?

17. Is the extent of the LD2 designation and the zoning of the LD2 area appropriate and represent good planning?
18. Does the proposed zoning by-law under appeal by Silverwood appropriately implement the Silverwood Draft Plan?

CITY OF HAMILTON ("HAMILTON")

19. Whether the design of the Silverwood Draft Plan is appropriate and consistent with the policies of the Secondary Plan and the Waterdown North Urban Design Guidelines?
20. Whether the proposed density as shown on the Silverwood Draft Plan is appropriate and conforms to the Secondary Plan?
21. Whether the pipeline integration within the rear lots as shown on the Silverwood Draft Plan is appropriate and conforms to the Secondary Plan setback of 20 meters and the Secondary Plan designation as "Utility"?
22. Whether the park configuration and design as shown on the Silverwood Draft Plan is appropriate and conforms to the Secondary Plan?
23. Whether the proposed lots along the northern edge of the Neighbourhood Park as shown on the Silverwood Draft Plan are appropriate and conform to the policies of the Secondary Plan?
24. Whether the Secondary Plan requirement for the submission of an Urban Design Brief to demonstrate consistency with the Secondary Plan and urban design guidelines has been satisfied?
25. Whether the proposed unit mix as shown on the Silverwood Draft Plan is appropriate and conforms to the Secondary Plan?
26. Whether there is adequate traffic capacity in the existing road network in the Hamilton/Burlington area in the context of Policy A.1.11 of the Town of Flamborough Official Plan for the purposes of accommodating the volumes generated by the Silverwood Draft Plan?
27. Whether the Silverwood Draft Plan and zoning appropriately adhere to the urban design policies of the Secondary Plan and the Waterdown North Urban Design Guidelines?
28. Whether the Silverwood Draft Plan, if approved, will allow for the appropriate integration of adjacent lands that are being planned on the basis of the Secondary Plan?
29. Whether the northern limit of the Silverwood Draft Plan should be scaled back in order to ensure that the Plan will not compromise the future alignment options of

the proposed East/West Transportation Corridor or result in unnecessary undevelopable remnant lands?

30. Whether phase 2 plans for the lands north of the Silverwood Draft Plan and south of the East/West Transportation Corridor will be of a sufficient size to allow for design that accords with the Secondary Plan(no reverse frontage lots)?
31. Whether the lot frontages and depths proposed on the Silverwood Draft Plan are adequate and appropriate?
32. Whether appropriate zoning standards and draft plan conditions have been proposed?

CITY OF BURLINGTON ("BURLINGTON")

33. Prematurity:
 - (a) Should the proposed development be approved in advance of the Waterdown North Secondary Plan being in force and effect?
 - (b) Are the proposed rezoning and plan of subdivision premature?
34. Traffic Capacity:
 - (a) Is there adequate traffic capacity in the existing road network in the Hamilton/Burlington area to accommodate the volumes to be generated by the proposed development?
35. Comprehensive Planning:
 - (a) Should the proposed plan of subdivision include all of the applicant's lands in order to (i) show how the lands will be developed in the future; and, (ii) to ensure the development of the southerly portion of the site does not result in the creation of a land locked parcel?
36. Conditions of Draft Plan Approval:
 - (a) If the OMB approves the proposed rezoning and plan of subdivision, what conditions of draft plan approval should be imposed?

SUN-CANADIAN PIPE LINE COMPANY LIMITED ("SUN-CANADIAN")

37. Whether the Secondary Plan and Silverwood's proposed rezoning and Draft Plan conform with the Greenbelt Plan?
38. Whether the Secondary Plan and Silverwood's proposed rezoning and Draft Plan are consistent with the Provincial Policy Statement?
39. Whether the Secondary Plan and Silverwood's proposed rezoning and Draft Plan conform with the Official Plan of the former Region of Hamilton-Wentworth and the Official Plan of the former Town of Flamborough, as amended by Official Plan Amendment No. 28?
40. Whether the Secondary Plan and Silverwood's proposed rezoning and Draft Plan are contrary to the regulatory requirements of the *Technical Standards and Safety Act, 2000*?
41. Whether the Secondary Plan and Silverwood's proposed rezoning and Draft Plan represent good planning, having regard to the Guidelines for Development in the Vicinity of Oil and Gas Pipeline Facilities (P1-98/02)?
42. Whether the proposed residential lots on the existing oil pipeline easement represents good planning?
43. What are the appropriate conditions of draft plan approval for the Silverwood Draft Plan?

LANDMART REALTY CORP. ("LANDMART")

44. Whether the proposed densities shown on the Silverwood Draft Plan are appropriate and do they conform to the Secondary Plan?
45. Whether the proposed density as shown on the Silverwood Draft Plan results in any infrastructure (roads capacity, water supply, sanitary sewer and stormwater management) constraints or limitations to adjoining development lands?
46. Does the area of the Phase 1 Draft Plan conform to the drainage areas of the Waterdown Integrated Water and Wastewater Master Plan?
47. Do the proposed Storm Water Management facilities conform to the Master Drainage Plan and if so, what are the impacts on the proposed storm ponds?
48. Does the Phase 1 plan conform to the Secondary Plan in terms of roads and how does this alignment affect the integration of alignment for plans to the east of Phase 1?

MC2 HOMES

49. If it is determined that there is a road capacity restriction or limitation, have appropriate arrangements been made for the phasing of development of developable lands in the North Waterdown Planning Area, including the Silverwood Draft Plan?
50. Has the alignment of the East-West Transportation Corridor been determined, and the implications, if any, for the development of the Silverwood Draft Plan and the appropriate integration with other developable lands in the North Waterdown Planning Area been determined?
51. Have satisfactory arrangements been made for cost sharing with respect to shared facilities west of Borer's Creek?
52. Have appropriate arrangements been made to accommodate storm water management for the Silverwood Draft Plan and has there been sufficient co-ordination and comprehensive planning for the storm water management of lands west of Borer's Creek to ensure the appropriate integration of development of other lands west of Borer's Creek?
53. Does the Silverwood Draft Plan provide for appropriate integration with the development of other lands west of Borer's Creek?

AMEDEO DiMARCO ("DiMARCO")

54. Should the size of the Neighbourhood Park to be designated in the lands subject to the Secondary Plan and west of Borer's Creek be based on:
 - (a) the amount of land subject to the entire Secondary Plan; or
 - (b) the lands subject to the Secondary Plan, west of Borer's Creek?
55. Should the Secondary Plan provide that the zoning and conditions of approval for lands within the Silverwood Draft Plan that are adjacent to the proposed Neighbourhood Park be the same as the zoning and conditions of approval for lands adjacent to the proposed Neighbourhood Park that are owned by DiMarco?
56. Is the orientation of the lots abutting the Neighbourhood Park, as depicted on the Composite Plan, satisfy the principles of good planning?
57. Whether the proposed density for the development of Silverwood's lands (as depicted on the Silverwood Draft Plan) create a deficit in capacity for any type of serving or infrastructure that would restrict the immediate development for residential use of the lands east of Silverwood's lands and west of Borer's Creek, and if so, what type of restrictions should be placed on all owners of land west of Borer's Creek?