

ISSUE DATE:

**January 20, 2012**



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL090114

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellants: See below  
Subject: Rural Hamilton Official Plan  
Municipality: City of Hamilton  
OMB Case No.: PL090114  
OMB File No.: PL090114

**List of Appellants**

No.	Appellant
1	Ontario Stone, Sand & Gravel Association (OSSGA)
2	Paletta International Corporation
3	P&L Livestock Limited
9	St. Marys Cement (Canada) Inc.
10	Demik Developments
11	1694408 Ontario Inc.
13	Artstone Holdings Limited
14	Artstone Holdings Limited
15	Weizer Investments Limited
16	Corpveil Holdings Limited
18	Ancaster Christian Reform Church
19	456941 Ontario Ltd., 1263339 Ontario Ltd. and Lea Silvestri ("Silvestri Investments")
20	Angelo Giacomelli and Mario Nesci
21	Earl Fransden and Kirsten Fransden
22	Keith Pickles and Brenda Pickles
23	John Paolini, Gino DalBello, Olindo DalBello, Luigi DeTina, Peter Djeneralovic, Jim Swick and Quinto Simone
24	New Country Investors Limited
25	1507565 Ontario Inc.
27	Lafarge Canada Inc.
28	Peter Cartwright
29	City of Hamilton
30	Dr. Tom Nugent
31	1478742 Ontario Inc. and 2157722 Ontario Inc.
32	DiCenzo (Golf Club Road) Holdings Inc.

33	Dufferin Aggregates (a division of Holcim (Canada) Inc.)
35	David E. Mercer
36	Multi-Area Developments Inc.
37	Paletta International Corporation (Elfrida Lands)
39	2101510 Ontario Inc. (subsumed by Paletta International Corporation)
40	2000963 Ontario Inc.
41	Mud & First Inc.
42	2084696 Ontario Inc.
43	2188410 Ontario Inc.

## APPEARANCES:

### Parties

### Counsel

City of Hamilton

M. Minkowski; M. Kovacevic

Demik Developments, 1694408 Ontario Inc.

S. Rogers

Ministry of Municipal Affairs and Housing  
(MMAH)

R. Boxma

1507565 Ontario Inc.

D. Tang

Multi-Area Developments Inc.

M. Noskiewicz

456941 Ontario Ltd. and  
Lea Silvestri ("Silvestri Instruments")

P. Pickfield

Ancaster Christian Reformed Church

P. Tice

1800615 Ontario Inc. and 2157722 Ontario  
Inc.  
DiCenzo (Golf Club Road) Holdings Inc.

A. Buist (for R. Cheeseman)

Dr. Tom Nugent

Peter Cartwright

**DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD**

This Pre-hearing Conference (PHC) relating to the appeals to the Rural Hamilton Official Plan ("Rural OP") took place on December 12, 2011. It is one of a series of hearings to deal with procedural matters. It was specifically geared to Groups 4, 6, 8 and 10.

At the start of the hearing, Mr. Minkowski, Counsel for the City, advised the Board of the following:

1. A settlement has been reached between the City and the Ministry of Municipal Affairs and Housing (MMAH) with respect to Group 6, regarding Modification 33b. The Parties request approval of the Minutes of Settlement;
2. Groups 4, 8 and 10 request adjournment *sine die*; and
3. Ms Rogers, Counsel for Demik Developments and 1694408 Ontario Inc., requests a TCC pertaining to Groups 1, 3 and 9.

Mr. Kovacevic, Counsel for the City, advised the Board that the City had appealed the Minister's Modification. The Minutes of Settlement amend lands designated Rural and changes them to the Agricultural designation. The affected lands are outlined in red in Attachment "1a" and identified as 'A' to 'J' in Attachment "1b" to the Minutes. However, the City is withdrawing its appeal to the following parcels, and the Minister's Modification will remain: - Parcels A1 to A9; B; E1 to E5; G6 to G8; J1 and J2; H1 to H3; I9 to I11 will be designated Agricultural.

Joanne Hickey-Evans, the City's planner, gave planning opinion evidence with respect to Modification 33b. The City uses the Land Evaluation Area Review (LEAR) as a tool to determine Rural and Agricultural designations. She took the Board through Attachment "1b" in the Minutes, and identified the areas to be designated Rural. It was her opinion that the lands to remain Rural can be supported for the following reasons:

1. The City maintains Rural designated lands in different areas of the City and they generally serve the rural community;

2. Rural designated lands are contiguous to other 250 ha parcels, except for three small areas identified as B, C and F;
3. Rural designated lands generally have low LEAR score, poor soil (Areas D and I), land fragmentation and conflicting land uses (Areas A, C, F, G and J).

Further, the Parties have agreed to Site-specific Policies for:

- 432 Highland Road East, shown as Attachment “2” to the Minutes, to maintain the Agricultural designation, but the policy recognizes the existing retail use.
- The Super Sucker Hydro Vac Services Inc. property, shown as Attachment “3” to the Minutes and described on paragraph 5, is subject to a planning application before the City and will be dealt with when the application is processed.

It was Ms Hickey-Evans’ opinion that the Rural land use designation represents good planning for the municipality, is consistent with the PPS and conforms to the Greenbelt Plan.

Mr. Kovacevic requested the Board approve the changes to Modification 33b as set out in Attachment 1b; confirm the City’s partial withdrawal of its appeal to Modification 33b to the “hatched” lands outlined in red in Attachment 1b; approve the Site-specific policy in Attachment 2 of the Minutes of Settlement; and acknowledge that the Board, later will consider by way of Site-specific policy in the Rural OP, the results of *Planning Act* applications being processed for the land in Attachment 3 of the Minutes of Settlement.

Mr. Pickfield supported the Modification as per Minutes of Settlement, but pointed out that his clients’ lands are in different situations and there are two other concurrent proceedings before the Board – the Airport Employment District Secondary Plan (AEDSP) and the City’s Urban OP that may affect them. His client, Silvestri Investments, supports the Modifications without prejudice to the position it will be taking

and the evidence it will be calling with respect to the policies that will apply to their land under those proceedings.

Lengthy discussion ensued between the Parties on how the Board should address the issues at hand (the Hamilton Rural OP), as affected by the concurrent appeal proceedings for the Airport Employment District Secondary Plan and the City's Urban OP. Some of the issues include:

1. whether lands in the AEDSP ought to remain for employment purposes, or should portions be designated residential? If the Board determines the inclusion of residential designation, Groups 4 and 8 may be involved;
2. whether the urban expansion of the Elfrida lands ought to include residential; and
3. Group 10 also pertains to the AEDSP.

Mr. Noskiewicz argued that depending on how the Board rules on these issues at the Urban OP appeals (PHC on February 12, 2012) and addresses threshold issues in the AEDSP proceedings (Hearing May 22, 2012), it would be premature to deal with these Groups at this time. There are consolidation possibilities for Groups 4 and 8, or 4, 8 and 10, that would need to be explored further.

The Parties therefore requested that the proceedings for Groups 4, 8 and 10 be adjourned *sine die* to allow for the outcome of the AEDSP proceedings to evolve. However, the adjournment should be under the understanding that if any of the Parties feel that it is time to bring these matters forward, they should be permitted to do so on Notice of Motion or on consent of all the Parties.

Mr. Minkowski advised the Board that the City and Ms Rogers' clients – Groups 1, 3 and 9 (scheduled for 10-day Hearing to start on April 30, 2012), have been involved in positive discussion and have advanced to possible agreement. They would like to schedule a TCC in mid January 2012 to present a possible settlement.

## Disposition

1. The Board hereby approves the changes to Modification 33b of the Rural Hamilton Official Plan as set out in Attachment 1b to the Minutes of Settlement;
2. The Board confirms the City's partial withdrawal of its appeal to Modification 33b with respect to the "hatched" lands outlined in red in Attachment 1b to the Minutes of Settlement.
3. The Board hereby approves the Site-specific policy as set out in Attachment 2 of the Minutes of Settlement, and acknowledges that if necessary, the Board will consider by way of Site-specific policy in the Rural Hamilton Official Plan, the results of *Planning Act* applications being processed for the land shown in Attachment 3 of the Minutes of Settlement.
4. The Board hereby adjourns the proceedings for Groups 4, 8 and 10 *sine die*, to allow for the outcome of the Airport Employment District Secondary Plan and the City's Urban OP appeal proceedings to evolve. Any Party may, by Notice of Motion or on consent of all the Parties, request the Board to bring these matters forward.
5. The Board sets a Teleconference Call (TCC) for **Tuesday, January 17, 2012, at 9:45 a.m.**, to deal with settlement proceedings for Groups 1, 3 and 9. The Parties are to call **416-212-8012 or 866-633-0848 and enter Code 4779847#**.

No further Notice is required for the above hearings.

This Member is not seized but will continue to case manage this matter subject to the requirements of the Board's calendar.

This is the Order of the Board.

"A. Christou"

A. CHRISTOU  
MEMBER