

ISSUE DATE:

May 29, 2012



PL090114

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

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 Reformed 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 Holson 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 and M. Kovacevic

Ministry of Municipal Affairs and Housing

R. Boxma and C. Young

Paletta International Corporation

S. Snider

Friends of Rural Community and the Environment (FORCE)

G. Flint

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

This hearing on April 30, 2012, relates to the appeals to the Rural Hamilton Official Plan (“Rural OP”) and dealt with the appeals in Groups 1, 3 and 9.

At the start of the hearing, Mr. Minkowski, Counsel for the City of Hamilton (“City”), advised the Ontario Municipal Board (“Board”) that the City has reached settlement with Paletta International Corporation (Paletta) on the one remaining issue from the March 29, 2012 PHC and has resolved one more outstanding matter in Group 5 - Severances. After this hearing, Mr. Minkowski submitted, the City would have a functional Rural Official Plan (OP), with some minor exceptions:

- The appeals remaining to the Rural Official Plan are the Elfrida-related matters arising under Groups 4 and 8, and two site-specific appeals.
- Further, the Airport Employment issue is proceeding to the Board before a different panel in May, which will have a bearing upon Elfrida-related appeals to the Rural OP. On this point, it is relevant to bear in mind there is still the Group 10 appeals to the Rural OP which are related to the Airport Employment proceeding.
- In addition, there is a further Group 3 appeal remaining by the Aggregates Group. This appeal pertains to Appendix C of the Rural Official Plan and does not impact upon the remainder of the Rural Official Plan functioning as an operating document.

The Paletta settlements

The Board heard planning opinion evidence from City planner Kristin Maxwell on the settlements. Ms. Maxwell testified that the appeal to item 4 in Exhibit 1, Issues List from Group 1, 3 and 9, has been withdrawn. Further, Volume 1 Policies C.2.5.1 and Chapter G – definition of “Intermittent Streams” shown in Exhibit 2, have also been withdrawn. She requested that the Board recognize that these policies are now in force and effect.

With respect to Group 5, Ms. Maxwell recalled that all matters were previously resolved, with the exception of two policies in Chapter F – Implementation, shown in item 3 of Exhibit 3 (Issues List for Group 5). She testified that the appeal pertaining to policy 1.14.2.2(a)(i), **Abutting Lands** has been withdrawn, and the appeal to policy 1.14.2.2.(c)(i), **Non-Abutting Lands** has been settled by way of modification, both as indicated in Exhibit 4, Changes to Rural Hamilton OP Policies.

As these policies deal with existing dwellings to be retained, the goal of maintaining a house in the farm would be reinforced. It was the planner’s opinion that the settlement and the proposed policies represent good planning for the municipality, are consistent with the Provincial Policy Statement (PPS), conform to the Greenbelt Plan and are in the public interest.

Ms. Maxwell recommended that the Board approve the settlement and where the appeals have been withdrawn, confirm that these policies are now in force and effect.

Mr. Flint, on behalf of the Friends of Rural Community and the Environment (FORCE), requested the Board direct the City to notify the parties and participants if

the matters that have been adjourned *sine die* throughout the appeal process are reconvened.

The City objected vehemently to such request and submitted that the groupings and their interests were established long ago. FORCE is not an appellant. The Board has allowed them party status at their request. It would be prejudicial to others to be given an opportunity to inject themselves in the future. The adjourned matters are site-specific and no material has been filed on what FORCE's case is. FORCE has not expressed interest in the outstanding site-specific matters. FORCE is not a party to the Airport Employment case and there is no certainty as to what may evolve late in that process. Therefore, the Board should not allow the request for notice.

Disposition

The Board is pleased that the City and Paletta have resolved the appeals through settlement agreements and commends the parties for their efforts. This hearing dealt with settlements for Groups 1, 3 and 9 and with Group 5, regarding severances. The Board heard uncontradicted planning opinion evidence in support of the settlements. Counsel for Paletta consents to the changes as generally described by the City witness.

The settlement and withdrawals to the Rural Hamilton Official Plan appeals as shown in Attachment 1 to this decision (Exhibit 2) and the settlement reached with respect to Chapter F – Implementation (Exhibit 5), represent good planning, as they would safeguard the integrity of the rural area and the policy will continue to provide for a dwelling to be part of the farm operation.

The Board is satisfied that the Rural Hamilton Official Plan represents good planning for the municipality, is consistent with the PPS, conforms to the Greenbelt Plan and is in the public interest. The Board will recognize the withdrawn appeals to policies as set out in Exhibit 2 (Attachment "1" to this decision) and will approve the modification to policy F.1.14.2.2 as shown in Exhibit 5 (Attachment "2" to this decision). The Board orders that the modified policy should come into effect forthwith. All the appeal withdrawals indicated in Exhibit 2 are now into force and effect.

The Board has considered the FORCE request for notice if the matters that have been adjourned *sine die* throughout the appeal process are reconvened. According to the rules of fairness and natural justice, parties have a right to notice of Board proceedings to which they are parties to. Given that FORCE is a party, they have the right to be notified of any hearing event regarding adjourned matters of the Hamilton Rural OP. The Board hereby will allow the request and directs the City to accordingly give notice to FORCE if an adjourned matter comes before the Board.

This is the Order of the Board.

“A. Christou”

A. CHRISTOU
MEMBER

Exhibit No. 2
Rural Hamilton Official Plan
OMB File No. PL090114

April 30, 2012

Status of Remaining Appeals

Group 1/3/9 Issues Withdrawn by Paletta Volume 1	Withdrawn/Settled
C.2.5.1	Withdrawn
Chapter G – definition of “ Intermittent Streams ”	Withdrawn

ATTACHMENT “2”

Exhibit No. 5

Rural Hamilton Official Plan
OMB File No. PL090114

RURAL HAMILTON OFFICIAL PLAN POLICIES

April 30, 2012 – Paletta Settlement (Group 5 – Severances)
As approved by City of Hamilton Council on April 17, 2012

Chapter F - Implementation

F.1.14.2.2 c) i) The owner and operator of the farm maintains an existing dwelling on land that is also part of the consolidated farm operation;