

ISSUE DATE:

Nov. 01, 2011



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.: PL080114

List of Appellants

- | No. | Appellant |
|------------|---|
| 1. | Ontario Stone, Sand & Gravel Association (OSSGA) |
| 2. | Paletta International Corporation |
| 3. | P&L Livestock Limited |
| 4. | Copetown Lions Development Association |
| 5. | Bella Court Developments Limited |
| 6. | 557619 Ontario Inc. |
| 7. | 1175819 Ontario Ltd. |
| 8. | 1205953 Ontario Limited |
| 9. | St. Marys Cement (Canada) Inc. |
| 10. | Demik Developments |
| 11. | 1694408 Ontario Inc. |
| 12. | Blackheath Developments Inc. and Future Homes Construction Limited (c.o.b. Satellite Golf Centre) |
| 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. | 1800615 Ontario Inc. and 2157722 Ontario Inc. |

32. DiCenzo (Golf Club Road) Holdings Inc.
33. Dufferin Aggregates
35. David E. Mercer
36. Multi-Area Developments Inc.
37. Paletta International Corporation
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, J. Wice

Ministry of Municipal Affairs and Housing

C. Young

456941 Ontario Ltd., 1263339 Ontario Ltd.
and Lea Silvestri ("Silvestri Investments")

P. Pickfield

Demik Developments and 1694408 Ontario
Inc.

S. D. Rogers

1507565 Ontario Inc.

D. Tang

Multi-Area Developments Inc.

M. Noskiewicz

Paletta International Corporation
2000963 Ontario Inc., Mud & First Inc.,
2084696 Ontario Inc., & 2188410 Ontario
Inc.

J. Drake

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

R. Cheeseman

Niagara Escarpment Commission

J. Ginsburg

Artstone Holdings Limited, Corpveil Holdings
Limited, Weizer Investments Limited, P&L
Livestock Limited, & Paletta International
Corporation

S. Snider

Ancaster Christian Reform Church

P. Tice

Dr. Tom Nugent

Participants

Freeland Developments Ltd.,

F. Sperduti

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 August 29, 2011 and is one of a series of hearings to deal with procedural matters. It was specifically geared to Groups 4, 5, 6 and 8.

With respect to Group 5, Ms Wice, Counsel for the City, advised the Board that there is consensus on the Procedural Order (PO), but the Issues List has not been agreed to yet. On consent, the Parties would like to cancel the October 24, 2011 one-week hearing. Also, they would like to cancel the three-week hearing scheduled to start on January 30, 2012 and replace it with a one-week hearing to start on January 9 to 13, 2012, at 10:30 a.m.

Ms Wice submitted a draft PO for the January 9 to 13, 2012, hearing and requested the Board to order that an Issues List be submitted to the Board by September 27, 2011. On consent, the Parties would like the Board to withhold its Order from this hearing until the Issues List is submitted. (The Board acknowledges that the PO has been submitted before this Decision was issued)

Mr. Minkowski, Counsel for the City, addressed the developments around Groups 4, 6 and 8, as follows:

Group 4 deals with text issues of the Official Plan (OP), with cross references to other parts of the OP.

Group 6 deals with mapping issues. The mapping shows the Rural Area and contains an Agricultural designation and a Rural designation.

Group 8 deals with text issues and identifies Special Policy Areas (SPA) for future growth, which are subject to current and ongoing studies.

He submitted that Groups 4, 6 and 8 should be handled separately from each other. Alternatively, he offered the suggestion that Groups 4 and 8 could proceed together or separate, but Group 6 should be uncoupled. A further PHC should be scheduled to address these groupings. Group 8 should be delinked immediately and be attached with the City's Urban OP appeals. The Urban OP has text in it that deals with issues in the Elfrida area to the south of the existing urban boundary. Group 8 should therefore be adjourned to the Urban OP and be dealt together with the Elfrida appeals.

Ms Rogers advised the Board that her clients have interest in all three groups (4, 6 and 8), but do not own land in the Elfrida area. Their interests are adverse to the City's position with respect to Group 8, but they are aligned with MMAH on Group 8. They are also in line with the City with respect to Group 6. Her clients do not object to adjourn to the September 27, 2011 PHC. She has no strong opinion on any of the issues identified so far and would concur with Mr. Minkowski's wishes.

Mr. Noskiewicz advised the Board that all his clients have land in the former settlement of Elfrida and their appeals refer to the three groups. They are in agreement that Group 8 should be allowed to catch up with the Urban OP, but there was no Motion raised at this PHC to include Group 8 with the Urban OP. The question is if Groups 4 and 6 should be dealt with separately. He suggested that matters relating to all three groups be adjourned to the September 27, 2011, PHC. It would be premature to make a decision to consolidate any Groups at this time. Motions could be made after the September 27, 2011, PHC.

Mr. Snider, Mr. Tice and Mr. Pickfield concurred with Mr. Noskiewicz that the Board does not have a Motion to deal with the issues discussed. They agree that a Notice of Motion and proper Affidavit evidence should be presented for the Board to make an Order as proposed by the City. The lawyers can meet together to try and resolve this issue.

Mr. Tang submitted that Groups 4 and 8 were interlinked in SPA language in the OP. However, MMAH has modified the policy and has removed the interconnection. Groups 6 and 8 are also interlinked. He requested the Board to adjourn consideration of the three Groups to the September 27, 2011 PHC.

Mr. Cheeseman concurred that the three Groups should be dealt with the Urban OP.

Mr. Tice submitted that not everyone in Group 6 is in the Elfrida area and his client does not want to be Party to the Elfrida hearing. He suggested that there should be a split of Group 6 with those appellants who have interests within the Elfrida area and those who are not Elfrida related.

Mr. Tice also submitted that his client, Ancaster Christian Reform Church, is also Party to Group 10, as per the Board's disposition of November 25, 2010, but does not appear as such in the Grouping list. He requested that the Board update the list accordingly to include his client. (The Board notes that this administrative matter has been addressed).

Ms Ginsburg submitted that the Niagara Escarpment Commission (NEC) is Party to Group 4 matters, but they are not appellants to the Urban OP.

Mr. Minkowski submitted that the City has not taken the position that Group 6 is linked to Groups 4 and 8, but has treated the Groups separately. There is consensus among the Parties that Groups 4 and 8 can be linked to catch up with the Urban OP. Mediation is scheduled in October for Group 6. Group 8 is concerned with SPA policies in the Elfrida area. The Urban Area does not contain a Rural land use designation, and Group 8 is not contingent on whether the land use is Urban or Rural.

Mr. Minkowski submitted, for the Board's information, Schedule D of the Hamilton OP "Rural Land Use Designations" showing the lands within SPA B - Modification 33b. He proposed that Group 6 be split to separate the Elfrida interests by creating Group 6B. This would address Mr. Tice's, Mr. Pickfield's and Ms Rogers' clients' concerns. The Board could then release the balance of Modification 33b.

Ms Rogers supported Mr. Minkowski's proposal. NEC took no position and MMAH concurred with the City on Group 6 being dealt with separately.

Mr. Snider reiterated that the Parties have to deal with the issues if the Board were to decide on whether Group 6 should be split. Another PHC is needed to deal with procedure and the PO for Group 6 should be set through proper Motion submissions.

Mr. Minkowski agreed that a separate PHC be set for Group 6 in November or December 2011. However, Groups 4 and 8 should be dealt with on September 27, 2011, with the Urban OP. He suggested the Board can direct that they be dealt within a parallel process.

Mr. Noskiewicz submitted that the Parties could come to a procedural understanding with the City, but they need further discussion. He supported a further PHC.

Mr. Tang submitted there are problems in the Board receiving and disposing with Schedule D of the Hamilton OP map at this time, as it names all the appellants to the Elfrida lands. He has no instructions from his client with respect to splitting Group 6 to 6A and 6B. The Board's Rules of Practice and Procedure require a Notice of Motion to implement this.

Mr. Pickfield agreed with a further PHC. He submitted further discussion is needed to deal with the linking between Groups 10 and 6.

DISPOSITION

The Board agrees that further discussions are needed between the Parties to concur on how to deal with specific issues raised at this PHC and will adjourn this hearing for Groups 4, 6, 8 and 10 to facilitate further discussion. The matter of splitting Group 6 should be brought to the Board via Notice of Motion with supporting evidence. The Parties are free to attend any specific PHC that pertains to their interests.

The October 24, 2011 one-week hearing and the three week hearing scheduled to start on January 30, 2012, are hereby cancelled and removed from the Board's calendar.

The Board sets aside January 9 to 13, 2012, for a one-week hearing to deal with Group 5 matters. The hearing will start at 10:30 a.m., at the McMaster Learning Centre, OMB Hearing Room 6.

The Board sets aside December 12 and 13, 2011, for a further PHC to deal with all matters pertaining to Groups 4, 6, 8 and 10. The hearing will start at 10:00 a.m., at the McMaster Learning Centre, OMB Hearing Room 6.

No further Notice is required for the above.

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