

ISSUE DATE:

December 07, 2012



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL110331
PL090779
PL101381
PL120574

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the City of Hamilton to approve Official Plan Amendment No. 35 to the Region of Hamilton-Wentworth Official Plan
OMB File No.: PL090779 (See Schedule "1")
OMB Case No.: PL090779

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the City of Hamilton to approve Official Plan Amendment No. 128 to the Town of Ancaster Official Plan (PL090780); Official Plan Amendment No. 18 to the Town of Dundas Official Plan (PL090781); Official Plan Amendment No. 118 to the Town of Flamborough Official Plan (PL090782); Official Plan Amendment No. 75 to the Township of Glanbrook Official Plan (PL090783); Official Plan Amendment No. 220 to the City of Hamilton Official Plan (PL090784); Official Plan Amendment No. 149 to the City of Stoney Creek Official Plan (PL090785)
OMB File Nos.: PL090780-PL090785 (See Schedule "1")
OMB Case No.: PL090779

The Ontario Municipal Board has received appeals under subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan
OMB File No.: PL101381 (See Schedule "2")
OMB Case No.: PL101381

The Ontario Municipal Board has received appeals under subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from the decision of the Minister of Municipal Affairs and Housing to approve the new City of Hamilton Urban Official Plan
OMB File No.: PL110331 (See Schedule "3")
OMB Case No.: PL110331

Auburn Developments Inc. 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 6593 of the City of Hamilton to rezone lands respecting 17 Ewen Road from "J" (Light and Limited Heavy Industrial, etc.) District to the "E-3" (High Density Multiple Dwellings) District to permit a 10 storey student residential building
Approval Authority File No. ZAC-07-062
OMB File No.: PL120574
OMB Case No.: PL120574

Auburn Developments Inc. 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 for the City of Hamilton to redesignate land at 17 Ewen Road from "Industrial" to "High Density Residential" to permit a 10 storey student residential building

Approval Authority File No. OPA-07-016

OMB File No.: PL120575

OMB Case No.: PL120574

Schedule "1"

Appellants to the amendments to the in-force Official Plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek (OMB Case No. PL090779)

| OMB FILE NO. | APPELLANT NAME |
|---------------------|-----------------------|
| PL090779 | TDL Group Corp. |
| PL090780 | TDL Group Corp. |
| PL090781 | TDL Group Corp. |
| PL090782 | TDL Group Corp. |
| PL090783 | TDL Group Corp. |
| PL090784 | Shawcor Ltd. |
| | TDL Group Corp. |
| PL090785 | TDL Group Corp. |

Schedule "2"

Appellants to the failure of the Minister of Municipal Affairs and Housing to announce a decision respecting the City of Hamilton Urban Official Plan (OMB Case No. PL101381)

| OMB FILE NO. | APPELLANT NAME |
|---------------------|-------------------------------|
| PL101381 | A. DeSantis Developments Ltd. |
| | LIUNA Group Corp. |
| | St. Joseph's Villa |

Schedule "3"

Appellants to the new City of Hamilton Urban Official Plan (OMB Case No. PL110331)

| OMB FILE NO. | APPELLANT NAME |
|---------------------|--|
| PL110331 | 1800615 Ontario Inc. and 1536708 Ontario Inc. |
| | 2000963 Ontario Inc. |
| | 2051206 Ontario Inc. |
| | 2084696 Ontario Inc. |
| | 2188410 Ontario Inc. |
| | 456941 Ontario Ltd., 1263339 Ontario Ltd., and Lea Silvestri |
| | 909940 Ontario Inc. |

| | |
|--|--|
| | Artstone Holdings Limited |
| | Carmen Chiaravelle, 1694408 Ontario Ltd., John Edward Demik, Peter Demik, Demik Brothers Hamilton Ltd., and Elaine Vyn |
| | City of Hamilton |
| | Confederation Park Shopping Centres Limited, Confederation Park Shopping Centres II Limited |
| | Corpveil Holdings Limited |
| | DiCenzo Construction Company Limited and DiCenzo (Golf Club Road) Holdings Inc. |
| | Flamborough Power Centre Inc., Flamborough South Centre Inc., Clappison Five Six Properties Inc. |
| | Freeland Developments Limited |
| | Gino and Olindo DalBello |
| | Hamilton Mountain Development Inc. |
| | Landmart Homes and Landmart Realty Corp. |
| | Lynmount Developments Limited |
| | Mondelēz Canada Inc. (formerly Kraft Canada Inc.) |
| | Mud and First Inc. |
| | Multi-Area Developments Inc. |
| | Norman Vartanian |
| | Paletta International Corporation |
| | Paletta International Corporation (re: Elfrida) |
| | Parkside Hills Inc. |
| | Sister Servants of Mary Immaculate |
| | Spallacci & Sons Limited |
| | Sullstar Twenty Limited |
| | TDL Group Corp. Inc. |
| | Twenty Road Developments Inc. |
| | Upper Centennial Developments Ltd. |
| | Waterdown Bay Ltd. |

APPEARANCES:

Parties

Counsel

City of Hamilton

M. Kovacevic, M. Minkowski, L. Magi
B. Duxbury and N. Smith

Ministry of Municipal Affairs and Housing

R. Boxma and C. Young

1507565 Ontario Inc.

D. C. K. Tang

Landmart Homes and Landmart Realty
Corp., and Sister Servants of Mary
Immaculate

R. D. Cheeseman

2000963 Ontario Inc., 2084696 Ontario
Inc., 2188410 Ontario Inc., Mud and First
Inc., Multi-Area Developments Inc. and
Paletta International Corporation (known
as Elfrida Landowners)

J. Drake

2051206 Ontario Inc., 909940 Ontario
Inc., Lynmount Developments Limited,
Spallacci & Sons Limited, Sullstar Twenty
Limited, Twenty Road Developments Inc.
and Yahezkel Zahavy (known as Twenty
Road Landowners West)

J. Farber

456941 Ontario Ltd., 1263339 Ontario
Ltd. and Lea Silvestri

V. Bacher

Artstone Holdings Limited, Corpveil
Holdings Limited, Paletta International
Corporation, Waterdown Bay Ltd., LIUNA
Group Corp., St. Joseph's Villa, A.
DeSantis Developments Ltd., Shawcor
Ltd. and Larry Freeman

N. Smith for S. Snider

Carmen Chiaravalle, 1694408 Ontario
Ltd., John Edward Demik, Peter Demik,
Demik Brothers Hamilton Ltd. and Elaine
Vyn (known as Twenty Road Landowners
East)

S. Rosenthal and T. Naylor

M. Bull for D. Wood

Confederation Park Shopping Centres Limited, Confederation Park Shopping Centres II Limited, and Hamilton Mountain Developments Inc.

Mondelēz Canada Inc. (formerly Kraft Canada Inc.)

M. Bull

Flamborough Power Centre Inc., Flamborough South Centre Inc., Clappison Five Six Properties Inc.

M. Bull for S. Mahadevan

Gino and Olindo DalBello and Norman Vartanian

M. Rudolph

Parkside Hills Inc.

B. Duxbury for M. McQuaid

TDL Group Corp. , A&W Food Services of Canada Inc., McDonald's Restaurants of Canada Limited and Wendy's Restaurants of Canada Inc.

D. Baker for M. Polowin

1800615 Ontario Inc., 1536708 Ontario Inc., DiCenzo Construction Company Limited, DiCenzo (Golf Club Road) Holdings Inc. and Upper Centennial Developments Ltd.

S. Zakem and P. Harrington

Auburn Developments Inc.

B. Card

Domenico Bozzo, Carmine Bozzo, Frank Veltri & Giuseppi Gervasi; Stephen Carlo Morelli & Jessie May Morelli; 2021455 Ontario Inc.; Johan Voortman & Aledia Voortman; Herbert Fischer, Manfred Fischer & Eugenie Fischer; Bruce Allen Stam & Valerie Florence Stam; Ilona Skeba & Christopher Mario Skeba; Braun Nursery Ltd., Braun Farm Properties Inc.; John Joseph Lindley & Ann Katherine Lindley; Jack Boers & Hilly Boers; Ingrid Elise Irene Bartels; Akke Lodewyks, Jan Lodewyks, Jack Lodewyks, Ronald John Lodewyks, Brian Edward Lodewyks & David Christopher Lodewyks; Vyn Flowers Inc.; Olive Clark; Charlotte

E. Davis

Eleanor Powell, Frederick David Bristol & Marilyn Bristol; Itala Silvestri-Trulli; Hendrik Wilhelm Holzel & Leonie Jacoba Holzel; Norma Gladys Chapman; Leah Rudolph; Ralph Vyn & Joyce Vyn; Charles Reginald James Pottruff & Dorothy Harriet Pottruff; People Players Inc.; Grasal Holdings Inc.; Marian Bick & Brian Bick; Adrian Kapteyn & Susan Patricia Scotland; Stanley Richard Jackson & Barbara Anne Smith; and Phyllis Macaluso (known as the Book Road West Group)

PARTIAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

[1] This is the fourth pre-hearing conference and motion hearing regarding appeals related to the new City of Hamilton (“City”) Urban Hamilton Official Plan (“UHOP”) adopted by the City on July 9, 2009, and approved by the Minister of Municipal Affairs and Housing (“MMAH”) with modifications on March 16, 2011, appeals of the failure of the MMAH to make a decision regarding the UHOP, prior to March 16, 2011, and the appeals related to amendments to the in-force official plans of the former Region of Hamilton-Wentworth, Towns of Ancaster, Dundas and Flamborough, Township of Glanbrook and Cities of Hamilton and Stoney Creek.

[2] This is the first pre-hearing conference and motion hearing for appeals by Auburn Developments Inc. (“Auburn”) regarding a proposed official plan amendment and associated zoning by-law amendment to permit a 10 storey student residence on lands zoned and designated for industrial uses.

CONSOLIDATION OF APPEALS

[3] At the last pre-hearing Auburn was added as a party to the UHOP proceedings with regard to the appeal by Mondelēz Canada Inc. (“Mondelēz”), formerly Kraft Canada Inc. Auburn has brought a motion to consolidate its appeals regarding its proposed site specific official plan amendment and zoning by-law amendment to these proceedings with regard to the hearing of the Mondelēz appeal.

[4] Neither the City nor Mondelēz opposed the consolidation. No other party filed any response to the motion.

[5] This appearance is also the first pre-hearing for the matters Auburn wishes to have consolidated with the Mondelēz appeal.

[6] Two interests appeared and sought participant status in the Auburn matters. Ms. M. Kiss, already a participant in the UHOP matters with an identified interest in the Mondelēz appeal, is also a member of the Concerned Ainslee Wood Neighbourhood Residents' Association. The Association is not incorporated. The Board recognizes Ms. Kiss's interest in the Auburn matters and adds her as a participant to the Auburn proceedings.

[7] Ms. L. Welsh appeared as the representative of the Ainslee Wood Westlake Community Association of Residential Homeowners Inc. The Board adds the Ainslee Wood Westlake Community Association of Residential Homeowners Inc. as a participant in the Auburn proceedings.

[8] The Board consolidates the Auburn appeals regarding its proposed official plan and zoning by-law amendments to these proceedings with regard to the hearing of the Mondelēz appeal.

[9] Both Ms. Kiss and the Ainslee Wood Westlake Community Association of Residential Homeowners Inc. will be shown as participants in the hearing segment of the Mondelēz appeal and Auburn appeals.

ORGANIZATION AND IDENTIFICATION OF ISSUES

[10] The City has taken the lead to review the issues cited by the various parties in their respective appeals. In discussion with the parties, the City has organized the issues into various groups that have common themes or are specific to individual sites. Nineteen groupings have been identified, of which half are thematic and half are site specific.

Deferral of Issues Impacted by a Separate Proceeding

[11] Three of the issue groupings deal with matters that are impacted by the outcome of the next phase of the hearing into appeals regarding the City's proposed Airport

Expansion Growth District (“AEGD”). These groupings are No. 3 Airport Noise, No. 9 Elfrida and Twenty Road Lands and No. 10 Airport Employment Growth District Secondary Plan.

[12] The Board was advised that official plan amendments to establish the AEGD expanded the urban boundary of the City for employment uses. The matter is being heard by a different panel of the Board. The first phase of the hearing precluded residential within the AEGD. The Board was advised that the second phase of that hearing will decide how much employment land should be within the AEGD. The amount of employment land to be within the AEGD impacts the decision on the appropriate boundary of the AEGD.

[13] Recognizing the interrelationship between these two proceedings, and on consent, the Board adjourned further consideration of issue groups No. 3, No. 9 and No. 10 to a future pre-hearing to be scheduled after the Board has disposed of the second phase of the AEGD matter.

Scheduling, Notice and Participation in Issue Group Hearings

[14] The identification of separate issue groups enables the Board to schedule individual hearing segments to consider one or more of the issue groups. This approach enables parties that are particularly interested in certain issues, but not in others, to be identified and participate in these individual segments. Doing so assists the Board in disposing of these matters in an efficient fashion since all parties are not interested in all issues.

[15] Setting down individual hearing segments is an administrative technique the Board uses to manage these consolidated proceedings. In doing so the Board is not separating out these matters. Appellants are parties to these proceedings. Indicating their interest in particular issues, but not all issues, does not mean that their party status has been shrunk and that they are barred from participating in other individual hearing segments.

[16] The Board cannot, however, be left to guess who has an interest in which individual hearing segment.

[17] No party disagreed with the issue groupings. These groupings identified the parties who would be most likely to be interested in a particular grouping by virtue of the issue or issues raised by that party in its notice of appeal.

[18] At this pre-hearing certain parties indicated their interest in certain issue groupings where the City had not included them in its draft of the issues and groupings.

[19] Parties are to indicate to the City which issue groupings they are interested in and intend to participate in the hearing segments arranged for these issues. The City is to add an appropriate column to the issue list groupings to indicate such parties.

[20] Where a party simply wishes to receive notice of the scheduling of a hearing segment to be able to monitor that segment, but does not intend to participate actively in that hearing segment, the party is to indicate that intention to the City. The City is to note that intention on the issue list groupings as well.

[21] Parties who are not appellants and who have been added at the pre-hearing conferences have generally been added as parties tied to and limited by the appeals filed by other identified parties with whom they have an interest or where they may be directly impacted by the outcome of the appeal. Earlier decisions by the Board to place limitations on parties added to these proceedings remain in force.

[22] The City has also indicated the issue groupings in which the participants have expressed an interest. With the addition of the Ainslee Wood Westlake Community Association of Residential Homeowners Inc., there are now four participants: Ms. M. Kiss, Mr. T. Nugent, Environment Hamilton Inc. and Ainslee Wood Westlake Community Association of Residential Homeowners Inc. Participants will receive notice of the scheduling of hearing segments in which they have indicated an interest.

[23] Only those who have indicated an interest in an issue grouping, either to participate actively or simply to monitor that hearing segment, will be notified of the scheduled hearing segment to deal with that issue grouping.

[24] The exception is the circumstance in which some or all of the issues in the grouping have been settled as between the parties involved in that grouping, and where such settlement involves a proposed modification to the official plan. Since such a settlement and proposed modification could not reasonably be known at this stage, parties may not know whether or not they would have an interest in the hearing

segment that deals with the proposed modification. In such circumstances, the Board will require full notice unless a party has specifically advised the Board that no notice of any such hearing segment is necessary.

ISSUE REFINEMENT

Settlement Discussions Continue

[25] The Board was advised that active discussions continue between the City and various parties in an effort to narrow the issues for hearing and identify possible settlement. The Board understands that certain site specific matters may be resolved or a request made to separate the matter out from these proceedings.

[26] The Board will deal with any resolutions or requests to separate matters out at the next scheduled pre-hearing.

[27] One of the ongoing settlement discussions is between the City and G. DalBello and O. DalBello (together known as "DalBello"). DalBello is one of the parties that appealed certain matters in the natural heritage policies, and related schedules, of the official plan. Counsel for the City and Counsel for DalBello have reached an understanding for the exchange of certain information to advance their discussions.

[28] At the request of the parties, the Board notes the following matters that have been agreed:

1. The City was provided with environmental field data, including a species inventory, on October 4, 2012;
2. DalBello has agreed to provide City staff access to the property, and a site visit is to occur in October;
3. The City will provide relevant information in its possession (collected through S.C.U.B.E. Secondary Plan and Subwatershed Study) relating to surrounding lands to DalBello by October 22;
4. DalBello will provide the City with a draft, without prejudice report by November 14; and
5. DalBello's and the City's planners will meet by November 22.

Issues to be Within Board's Jurisdiction to Decide

[29] Issues placed on the issue list must be relevant to the matters before the Board. They must also be within the Board's jurisdiction to decide.

[30] The UHOP provisions for a natural heritage system are being contested by a number of parties. These parties submitted issues for the issue list that raise the question of whether the official plan should provide for compensation to be made for lands designated as part of the Natural Heritage System.

[31] The issue list frames the evidence to be called at a hearing. Before finalizing the issue list for the natural heritage system issue grouping, the Board wishes to explore the question of whether the Board has the jurisdiction to modify an official plan to require compensation to be made for the designation of lands.

[32] The Board wishes to deal with this as a preliminary matter, affording the parties the opportunity to make submissions in writing that the Board will deal with at the next scheduled prehearing.

[33] The Board recognizes the need to have a clear question on which the parties may make submissions. The Board invited the interested parties to submit a question on consent. The parties have been unable to agree on the question. The Board sets the question as follows:

Is it within the Board's jurisdiction to modify an official plan to have a policy requiring compensation to be made for lands in private ownership where said lands are subject to identification, designation or policies in the official plan that limit their use?

[34] If those parties who placed the issue of compensation on the issue list advise the Board and the City that the issue of compensation is withdrawn then the Board will strike the issue from the list and no submissions are necessary. If the parties withdraw the issue of compensation, that advice is to be provided to the Board and to the City by November 23, 2012.

[35] At the pre-hearing, the Board set certain deadlines for written submissions in the event the issue of compensation is not withdrawn. On reviewing these deadlines, the Board is concerned that they may be too onerous and sets these revised deadlines as follows:

1. Written submissions on the question set out above, including any authorities on which parties intend to rely, are to be filed with the Board not later than noon on **Tuesday, December 4, 2012.**
2. Responding materials, including any supplementary authorities, are to be filed with the Board not later than noon on **Tuesday, December 18, 2012.**

[36] Written submissions are to be filed with the Board electronically and in hard copy.

ADDITIONAL HEARING EVENTS SCHEDULED

[37] Two further pre-hearings have been scheduled, both for two days' duration. The first is scheduled for **January 10 and 11, 2013.** The second is scheduled for **April 11 and 12, 2013.** Both will be held in the **Hamilton Convention Centre.**

[38] The January, 2013, pre-hearing will deal with the question of the Board's jurisdiction if written submissions are received on this matter in accordance with the requirements set out above. This pre-hearing will continue to refine the issue groupings, refine and finalize the issue list for each grouping, hear any further narrowing of matters in dispute, and set appropriate further dates for hearing segments.

[39] The parties are to prepare a procedural order for the Board's consideration at this January pre-hearing.

[40] With the exception of a possible change in the Natural Heritage issue list, issues within each grouping will be finalized at this pre-hearing, as will the parties who have indicated an interest in notification and/or participation in any particular hearing segment dealing with one or more issue grouping.

[41] The April, 2013, pre-hearing will continue this same process for matters not otherwise completed in January, 2013.

[42] At the request of the parties, the Board sets issue grouping No. 1, Natural Heritage System, to be heard in a **four week** hearing segment commencing **June 17, 2013,** in the **McMaster Downtown Centre at 50 Main Street in Hamilton.**

[43] Issue Groupings No. 6 Residential Intensification and No. 7 Transportation will be heard together. The Board is satisfied that 10 hearing days are appropriate for this hearing segment. Parties currently known to be interested in these issue groupings are

the City and Paletta International Corporation (“Paletta”). The parties have asked for a date in the fall. The Board will advise the parties when a date for this hearing segment is set. MMAH has indicated its wish to be notified of this hearing segment.

[44] Issue Grouping No. 2 is Land Use Designations and Schedules – Employment. Paletta is the only appellant to cite issues for this grouping. Issue Grouping No. 4 is Employment Land Conversion. This is the grouping that has the Mondelēz and Auburn appeals. Paletta also cited issues for this grouping.

[45] The parties have asked the Board to hear the Mondelēz and Auburn parts of No. 4 Employment Land Conversion separate from the Paletta part of that grouping.

[46] The parties have asked the Board to hear the Paletta part of No. 4 Employment Land Conversion together with No. 2 Land Use Designations and Schedules – Employment and No. 8 Implementation.

[47] The Board is satisfied that proceeding on this basis would be a more efficient way to deal with these matters. The parties have asked that the hearing segment for the Paletta part of No. 4, together with No. 2 and No. 8 be set down to be heard later in the fall. Several parties are involved in No. 8 and are engaged in further discussions with City. The Board will review the appropriate length and timing for this hearing segment at the January, 2013, pre-hearing.

CITY’S OMNIBUS MOTION TO DISMISS OR SCOPE CERTAIN APPEALS

[48] At the second pre-hearing the City brought an omnibus motion to scope or dismiss several appeals. The Board scoped part of the appeals of DiCenzo Construction Company Limited and DiCenzo (Golf Club Road) Holdings Inc. (known together as “DiCenzo”). The remainder of the City’s motion regarding DiCenzo, and the City’s motion regarding the appeals of 1800615 Ontario Inc. and 1536708 Ontario Inc., were adjourned on consent to the third pre-hearing conference.

[49] The parties asked the Board for a further adjournment to this pre-hearing to accommodate ongoing settlement discussions. No settlement has been achieved. The Board heard the City’s motion against DiCenzo and the numbered companies at this pre-hearing. The Board’s decision on the City’s motion will issue separately.

ORDER

[50] The Board orders that:

1. Submissions on the question of the Board's jurisdiction to modify an official plan to require compensation for the designation of lands are to be made in accordance with the requirements set out in paragraphs 29 through 36, above.
2. The next pre-hearings will commence on **Thursday, January 10, 2013 at 10:30 a.m.** for two days. A further pre-hearing will commence on **Thursday, April 11, 2013 at 10:30 a.m.** Both pre-hearings will be for two days' duration and will be held at:

**Hamilton Convention Centre
1 Summers Lane
Hamilton, Ontario**

3. The hearing segment for Grouping No. 1, Natural Heritage System will commence on **Monday, June 17, 2013 at 10:30 a.m. at:**

**McMaster Downtown Centre
OMB Hearing Room No. 6
50 Main Street East
Hamilton, Ontario**

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE CHAIR