

ISSUE DATE:

**June 20, 2012**



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

PL110331  
PL090779  
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 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

**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)

<b><i>OMB FILE NO.</i></b>	<b><i>APPELLANT NAME</i></b>
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)

<b><i>OMB FILE NO.</i></b>	<b><i>APPELLANT NAME</i></b>
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)

<b><i>OMB FILE NO.</i></b>	<b><i>APPELLANT NAME</i></b>
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.
	Kraft Canada Inc.
	Landmart Homes and Landmart Realty Corp.
	Lynmount Developments Limited
	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:**

<u>Parties</u>	<u>Counsel</u>
City of Hamilton	M. Kovacevic, M. Minkowski, L. Magi, and N. Smith
1800615 Ontario Inc., 1536708 Ontario Inc., DiCenzo Construction Company Limited, DiCenzo (Golf Club Road) Holdings Inc. and Landmart Homes and Landmart Realty Corp.	M. Kovacevic for R. D. Cheeseman
Larry Freeman	M. Minkowski for S. Snider
Waterdown Bay Ltd.	M. Minkowski for S. Snider
Kraft Canada Inc.	C. Estrela
Auburn Developments Inc.	B. Card
Carmen Chiaravelle, 1694408 Ontario Ltd., John Edward Demik, Peter Demik, Demik Brothers Hamilton Ltd. and Elaine Vyn	T. Naylor
Upper Centennial Developments Ltd.	P. Harrington

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

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This is the third 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.

### **City of Hamilton omnibus motion**

At the second pre-hearing conference, the City brought forward an omnibus motion to dismiss or scope several appeals. Part of the appeals of DiCenzo Construction Company Limited and DiCenzo (Golf Club Road) Holdings Inc. (known together as DiCenzo) were scoped, on consent, at that pre-hearing.

The remainder of the motion dealing with DiCenzo, and those parts of the motion dealing with the appeals of 1800615 Ontario Inc. and 1536708 Ontario Inc., and with the appeals of Landmart Homes and Landmart Realty Corp. (known together as Landmart) were adjourned to this pre-hearing conference.

The Board was advised that settlement discussions are underway between the City and these parties but were not yet complete. Counsel for the City was authorized to speak on behalf of the City and these parties to ask the Board, on consent, to adjourn the City's motion further to the next scheduled pre-hearing conference.

The Board understands that this further adjournment will result in either the Board being presented with a settlement of these appeals or the Board will proceed to dispose of the City's motion against these parties.

While the Board is prepared to accommodate settlement discussions between the parties, the Board wishes to ensure that matters are being addressed in a timely and efficient manner and that no further adjournment of the City's motion will be sought at the next pre-hearing conference.

The remainder of the City's omnibus motion dealing with DiCenzo, and those parts of the motion dealing with the appeals of 1800615 Ontario Inc. and 1536708 Ontario Inc., and with the appeals of Landmart are further adjourned to the next pre-hearing conference commencing Tuesday, October 9, 2012.

## **Addition of parties**

### **Larry Freeman:**

Larry Freeman has brought a motion to be added as a party to these proceedings.

Mr. Freeman's interests are aligned with those of Multi-Area Developments Inc., Paletta International Corporation, 2000963 Ontario Inc., Mud & First Inc., 2084694 Ontario Inc., and 2188410 Ontario Inc., known together as Elfrida Landowners.

The City is the only party to file a response to the Freeman motion for party status.

Counsel for the City was authorized to speak on behalf the City and of Larry Freeman.

On consent, the Board adds Larry Freeman as a party to these proceedings but only to the appeals of those known as Elfrida Landowners. In addition, Mr. Freeman adopts, is bound by and limited to the issues contained in the Issue List filed by the Elfrida Landowners appellants.

### **Auburn Developments Inc.:**

Auburn Developments Inc. (Auburn) has brought a motion to be added as a party to these proceedings.

The Board abridged notice of this motion to enable the Board to hear the matter at this pre-hearing conference.

Auburn's interest is in the impact of the appeal by Kraft Canada Inc. (Kraft) on Auburn's lands at 17 Ewen Road, Hamilton. The City and Kraft are the only parties to have filed a response to the motion.

In 2007, Auburn applied for a site-specific official plan amendment to redesignate its lands from industrial to residential, permitting apartment development, and for an associated zoning by-law amendment.

The City deferred consideration of the applications pending completion of the studies for the new UHOP.

The Board was advised that the UHOP designation applicable to the Auburn lands is essentially the same as that contained in Auburn's earlier application for an official plan amendment which had been deferred. Auburn supports the UHOP designation of its lands.

At the earlier pre-hearing conference dealing with the City's omnibus motion, the Kraft appeal was scoped, with a direct impact on Auburn's lands.

On May 1, 2012, City Council refused Auburn's application for an amendment to the in-force official plan that would reflect the UHOP designation. In the motion refusing the application, Council stated that Auburn's lands were not an appropriate location for residential development. City Council then passed a motion directing that the designation for the Auburn lands in the UHOP be changed to remove residential uses and to pursue this change in these proceedings now before the Board.

Given the modification to the UHOP that is being sought by the City, it appears that the only interest that would be defending the UHOP designation of the Auburn lands is Auburn.

The Board finds that Auburn has an immediate and direct interest in the appeal by Kraft.

On consent, the Board adds Auburn Developments Inc. as a party to these proceedings but only to the appeal by Kraft Canada.

Auburn has appealed the City's refusal of its site specific applications to this Board. Auburn advised the Board that it may wish to have these appeals consolidated or heard together with the appeal by Kraft.

For the purposes of this present decision of the Board to add Auburn as a party to these proceedings, Auburn is limited to the issues arising from the Kraft appeal. This limitation

is without prejudice to review by the Board at the time of any motion for consolidation or hearing together of Auburn's private appeals with the Kraft appeal regarding the UHOP.

### **Next prehearing conferences**

#### **October 9, 2012:**

Several of the parties to these proceedings are also parties to another proceeding of the Board dealing with appeals regarding the Airport Employment Growth District (AEGD) secondary plan. That proceeding has been phased.

Parties to these proceedings had advised the Board that the Board's decision in phase 1 of the AEGD proceeding may give rise to motions parties may wish to bring that would impact matters in these UHOP proceedings.

In the result, this phase 1 issue in the AEGD proceeding was settled.

The Board was advised that there are no motions arising from this first phase of the AEGD matter that will be brought before the next prehearing in the proceedings now before the Board.

Ms. Smith is counsel for the City in the AEGD matter. She appeared in this pre-hearing conference to assist the Board further in understanding what time the Board could reasonably release from the scheduled October pre-hearing in these proceedings such that the time might then be used in the next phase of the AEGD hearing, which has not yet been scheduled.

The Board had previously set the next pre-hearing conference for four days. With no time needed to deal with motions arising from the Board's decision on phase 1 of the AEGD matter, the Board now releases the fourth day of that pre-hearing.

The Board now confirms that the next prehearing will continue to commence on:



**Tuesday, October 9, at 10:30 a.m.  
Albion Room A & B  
Hamilton Convention Centre  
1 Summers Lane  
Hamilton, Ontario**

Up to three (3) days have been scheduled.

The agenda for this prehearing conference will include:

1. The final organization of all outstanding issues into categories including: site-specific/stand alone; issue specific/stand alone; and general to the entire UHOP. The City will take the initiative, in this regard, following consultation and circulation with and to the parties;
2. The setting of appropriate hearing dates;
3. The hearing of any settlements reached between the parties;
4. The final disposition of the outstanding matters in the City's omnibus motion; and
5. Any other matters arising from the foregoing.

All parties have confirmed to the Board that the UHOP is a priority. On this basis, the Board expects discussions between the parties to be focussed, timely, and efficient with a clear view to moving these matters along for hearing and disposition.

To the extent that discussions between the parties may result in settlements to be brought to the Board at this October pre-hearing conference, the parties are asked to make every effort to advise the Board by mid-September of any matters that will be presented on settlement, and to provide the Board with appropriate information to indicate the nature of the settlement.

**January 10, 2013:**

Although the October pre-hearing conference is designed to set these matters down for hearing, the Board also wishes to continue to encourage the scoping and possible

settlement of matters in dispute during the period preceding the commencement of the hearing of the merits. Accordingly, the Board sets a further pre-hearing conference for:

**Thursday, January 10, 2013, at 10:30 a.m.**  
**Hamilton Convention Centre**  
**1 Summers Lane**  
**Hamilton, Ontario**

Up to two (2) days have been scheduled.

This pre-hearing conference is designed to deal with any further settlements that crystallize after the October, 2012, pre-hearing conference and prior to the commencement of the hearing of the merits.

Parties are to advise the Board by Friday, December 14, 2012, whether there are settlements to be heard at the January pre-hearing conference.

**Correction of a reference to the withdrawal of an appeal**

In the Board's decision from the last pre-hearing conference, reference was made to Waterdown Bay Ltd. withdrawing its appeal of the UHOP.

Counsel for the City was authorized to speak on behalf of the City and on behalf of Waterdown Bay Ltd. in this matter.

The appeal has not been withdrawn. Rather, it was separated from these proceedings in October 2011, and consolidated with proceedings dealing with the Waterdown South Secondary Plan. Matters came to the Board in that proceeding on consent.

The Board was advised in this pre-hearing that wording has apparently not been finalized in that matter and no final decision and Order of the Board has been issued.

The Board corrects the earlier reference and confirms that the appeal of Waterdown Bay Ltd. has not been withdrawn.

No further notice is required.

The Board so Orders.

Susan de Avellar Schiller

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR