

Ontario Municipal Board
 Commission des affaires municipales
 de l'Ontario



ISSUE DATE: June 26, 2014

CASE NO(S): PL110331
 PL101300
 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 |
| 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 |

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| 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. |

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

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: ROPA 41
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101300

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

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea Silvestri, Lea Silvestri Investments Limited ("Silvestri Investments")
Appellant: 909940 Ontario Inc. and Lynmount Developments Ltd.
Appellant: Alex Milojevich; and others
Subject: OPA 135
Municipality: City of Hamilton
OMB Case No.: PL101300
OMB File No.: PL101301

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

Appellant: 2051205 Ontario Inc.
456941 Ontario Ltd., 1263339 Ontario Ltd., Lea
Silvestri, Lea Silvestri Investments Limited
("Silvestri Investments")
909940 Ontario Inc. and Lynmount Developments
Ltd.
Environment Hamilton; and others

Subject: OPA 82

Municipality: City of Hamilton

OMB Case No.: PL101300

OMB File No.: PL101302

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: 2051205 Ontario Inc.
Appellant: 456941 Ontario Ltd., 1263339 Ontario Ltd., Lea
Silvestri, Lea Silvestri Investments Limited
("Silvestri Investments")

Appellant: 909940 Ontario Inc. and Lynmount Developments
Ltd.

Appellant: Alex Milojevich; and others

Subject: By-law No. 10-288

Municipality: City of Hamilton

OMB Case No.: PL101300

OMB File No.: PL101303

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 |
|---------------------|-----------------------|
| PL090784 | Shawcor Ltd. |

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)

| <i>OMB FILE NO.</i> | <i>APPELLANT NAME</i> |
|----------------------------|--|
| PL110331 | 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 |
| | Corpveil Holdings Limited |
| | Flamborough Power Centre Inc., Flamborough South Centre Inc., Clappison Five Six Properties Inc. |
| | Freeland Developments Limited |
| | Gino and Olindo DalBello |
| | 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) |
| | Spallacci & Sons Limited |
| | Sullstar Twenty Limited |
| | Twenty Road Developments Inc. |
| | Upper Centennial Developments Ltd. |
| | Waterdown Bay Ltd. |

AND IN THE MATTER of a Motion brought by the City of Hamilton to consolidate certain matters

APPEARANCES:**Parties**

City of Hamilton

Counsel⁺/Representative

N. Smith+

| | |
|--|------------------|
| Freeland Development Limited | P. Morley+ |
| 456941 Ontario Ltd. 1263339 Ontario Ltd. Lea Silvestri Lea Silvestri Investments Limited (together known as "Silvestri Investments") | P. Pickfield+ |
| Sullstar Twenty Limited 909940 Ontario Inc. Lynmount Development Ltd. Twenty Road Development Inc. Spallacci & Sons Limited Yehezkel Zahavy (together known as "Twenty Road West") | J. Farber+ |
| Ontario Conference of the Seventh-Day Adventist Church Landmart Realty Corp. DiCenzo (Golf Club Road) Holdings Inc. Living World Christian Fellowship | R. D. Cheeseman+ |
| Marvin Wasserman Bernard Wasserman David Wasserman 1315501 Ontario Inc. (together known as "Wasserman") | P. Morley+ |
| Carmen Chiaravalle 1694408 Ontario Inc. John Edward Demik Demik Brothers (Hamilton) Ltd. Elaine Vyn Peter Demik (together known as "Twenty Road East") | K. Sliwa+ |
| Ancaster Christian Reformed Church Tradeport International Corporation | P. Tice+ |
| 1507565 Ontario Limited | D. Tang+ |

| | |
|--|-------------------------|
| <p>Multi-Area Developments Inc. Paletta International Corporation 2000963 Ontario Inc. Mud & First Inc. 2084696 Ontario Inc. 2188410 Ontario Inc. (together known as "Elfrida Landowners")</p> | <p>J. Hoffman+</p> |
| <p>Dr. Tom Nugent</p> | <p>Self-represented</p> |
| <p>Domenico Bozzo, Carmine Bozzo, Frank Veltri and Giuseppe Gervasi; Stephen Carlo Morelli and Jessie May Morelli; 2021455 Ontario Inc.; Johan Voortman and Aledia Voortman; Herbert Fischer, Manfred Fischer and Eugenie Fischer; Bruce Allen Stam and Valeria Florence Stam; Ilona Skeba and Christopher Mario Skeba; Braun Nursery Ltd. Braun Farm Properties Inc.; John Joseph Lindley and Ann Katharine Lindley; Ingrid Elise Irene Bartels; Akke Lodewyks, Jan Lodewyks, Jack Lodewyks, Ronald John Lodewyks, Brian Edward Lodewyks and David Christopher Lodewyks; Vyn Flowers Inc.; Charlotte Eleanor Powell, Frederick David Bristol and Marilyn Bristol; Itala Silvestri-Trulli; Hendrik Wilhelm Holzel and Leonie Jacoba Holzel; Ralph Vyn and Joyce Vyn; Charles Reginald James Pottruff and Dorothy Harriet Pottruff; Grasal Holdings Inc.; Marian Bick and Brian Bick (together known as the "Book Road West Group")</p> | <p>B. Stam</p> |

HEARING EVENT INFORMATION:

Motion Hearing and Pre-Hearing Held in Hamilton, Ontario on May 7, 2014

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER ON MAY 7, 2014 AND ORDER OF THE BOARD**

[1] This decision deals with two matters: a motion for consolidation and then a pre-hearing following the disposition of the motion.

MOTION FOR CONSOLIDATION

[2] The City of Hamilton (“City”) has brought a motion to separate certain matters from two large cases and consolidate them with the next phase of a third large case.

[3] The first case with matters to be separated is PL110331, dealing primarily with the Urban Hamilton Official Plan (“UHOP”) and to which several other matters have been consolidated.

[4] The second case with matters to be separated is PL090114, dealing with the Rural Hamilton Official Plan (“RHOP”).

[5] The third case to which certain matters are to be consolidated is PL101300, the secondary plan for the Airport Expansion Growth District (“AEGD”). Phases 1 and 2 of the AEGD matter have now been completed and decisions issued. The motion is for consolidation of certain matters to Phase 3 of the AEGD proceeding which is to determine the boundaries of the AEGD.

Preliminary Matters

[6] Several parties to the various cases who received notice of this motion and motion hearing filed no response and did not attend. Some of those who did not attend had advised the Board through an e-mail that they would be filing no response and would not attend. The Board appreciates the courtesy of advising the Board that a party

does not intend to file a response and does not intend to attend the motion hearing.

[7] The Board cautions, however, that care must be taken by a party's representative, whether a neighbour or counsel, to ensure that the content of the e-mail does not go beyond the courtesy advice of no response and non-attendance but, instead, goes on to suggest the position of the party with regard to the motion and sets out the reasons for the position. This latter part of such an e-mail should only be put to the Board as a formal response to the motion, filed in accordance with the Board's rules and any additional directions set by the Board. Similarly, parties with limited status that is tied to the issues as framed by a separate appellant must be careful not to step beyond the limits of their role and any e-mail messages must respect those limits.

[8] The Board received two such troubling e-mails and has accorded neither any weight in this motion.

Analysis and Finding

Appeals impacting the AEGD arise under several matters and are identified in the motion. In the case of the RHOP and the UHOP proceedings, issues arising from various appeals have been identified and grouped to assist in identifying the subject matter for hearing segments.

Airport Employment Growth District

[9] The motion is to consolidate the appeals of the following instruments with case PL101300 for the AEGD:

- Official Plan Amendment No. 41 of the former Region of Hamilton-Wentworth
- Official Plan Amendment No. 135 of the former Town of Ancaster
- Official Plan Amendment No. 82 of the former Township of Glanbrook

- Zoning By-law 10-288

Urban Hamilton Official Plan

[10] From the UHOP, PL110331, Issue Group 3 (Airport Noise) and Issue Group 20 (Site Specific – 2012 Upper James Street) are to be separated and consolidated with PL101300.

[11] Issue Group 10 (AEGD Secondary Plan) is modified so that two issues are removed and not consolidated with PL101300. Issue 4 of Issue Group 10 is transferred to the UHOP Issue Group 9 and will remain an issue to be adjudicated as part of the UHOP proceedings.

[12] Issue 4 reads:

Should B.2.3.1 and B.2.3.2 be amended to provide that the lands not ultimately forming part of the AEGD shall be included within the urban boundary?

[13] Issue 5 of Issue Group 10 deals with AEGD policy B.2.3.3, which reads:

B.2.3.3 The City recognizes the long-term economic importance of the John C. Munro International Airport and associated highway infrastructure for its unique role as a catalyst for airport related and other employment uses. These future employment lands shall be subject to Policies B.2.2.1 to B.2.2.3 – Urban Boundary Expansions. Lands in the vicinity of the John C. Munro International Airport should be designated for employment purposes that rely on this infrastructure [Mod 5(d)].

[14] Issue 5 reads:

Is B.2.3.3 an appropriate land use planning policy?

[15] In dealing with this matter, the City's motion initially read:

The UHOP Issues Group 10 (AEGD Secondary Plan) shall be modified to delete Issue 5 on the understanding that:

a. Lands subject to the Silvestri Investments, Twenty Road West and Freeland Developments Limited appeals are hereinafter referred to as "the subject lands".

b. At the conclusion of the AEGD Consolidation proceeding, if any of the subject

lands are not identified for employment uses and fall outside the Airport Employment Growth District, hereinafter the "UHOP appeal lands", Policy B.2.3.3 shall be held in abeyance pending completion of the UHOP appeals in relation to the UHOP appeal lands.

c. At the conclusion of the UHOP proceedings, if any of the UHOP appeal lands are not designated URBAN and remain RURAL, Policy B.2.3.3 shall come into full force and effect in relation to those lands.

[16] At the outset of the motion, the Board was advised that the City and Silvestri Investments had reached agreement on amended wording of Issue 5 in the City's motion by amending clause b to read as follows:

b. At the conclusion of the AEGD Consolidated Proceedings, **regardless of the Board's determination with respect to Issue 5**, if any of the subject lands are not identified for employment uses and fall outside the Airport Employment Growth District, hereinafter the "UHOP appeal lands", **Policy B.2.3.3 shall be deemed not to be applicable to the UHOP appeal lands for the purposes of the adjudication of the UHOP appeals.** [emphasis added by the Board]

[17] No party objected to this proposed change.

[18] The Board has highlighted the phrases that that have given the Board particular concern.

[19] By removing Issue 5 of Issue Group 10 from the UHOP proceedings and placing it in the AEGD proceedings, a decision on the issue would then be made in the AEGD proceedings. In itself, this is not a problem.

[20] The difficulty arises with the second highlighted phrase. The language here would lead to a circumstance where the Board's decision on the issue could not be brought up in the UHOP proceedings that deal with any appeals from landowners whose lands might or might not be, in the words of the disputed policy, "in the vicinity" of the airport. The amended language effectively asks the Board in the UHOP proceedings to ignore and not take into account the decision in the AEGD proceedings, regardless of whether or not that decision is relevant to the Board's determination of appeals in the

UHOP proceedings.

[21] The Board advised the parties that it was not prepared to separate out Issue 5 to be dealt with in the AEGD proceedings with such a condition inserted into the consolidation that sought to prevent the Board from considering a separate Board decision on a secondary plan when adjudicating appeals on the official plan.

[22] The Board then recessed for the parties to consider whether they wished Issue 5 to be consolidated without the proposed amending language that would limit consideration of the Board's decision in the UHOP proceedings or whether the request for separation and consolidation with the AEGD matters would be withdrawn.

[23] In the result, the Board was advised that all parties either consented, or did not object, to leaving Issue 5 of Issue Group 10 in the UHOP proceedings.

Rural Hamilton Official Plan

[24] From the RHOP, PL090114, Issue Group 10 (Special Policy Area C – Airport Employment District) is to be separated and consolidated with PL101300. This policy was appealed by the interests known in these proceedings as Silvestri Investments.

Conclusion

[25] Having regard to sections 37 and 38 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, Ontario Regulation 30/02 of the *Ontario Municipal Board Act*, and Board Rules 57-60, the Board grants in part the relief sought and separates certain matters from the RHOP and UHOP proceedings and consolidates them with the AEGD Phase 3 proceeding, as set out above.

[26] Parties and participants to the original appeals are parties and participants to the consolidated proceeding, subject to any restrictions imposed on the party or participant in the original proceeding.

PREHEARING CONFERENCE FOR CONSOLIDATED CASE

[27] Having dealt with the motion for consolidation, the Board then turned to the organization of the hearing.

Procedural Order

[28] The Board was advised that the parties had been working on a draft procedural order. The Board recognizes that the procedural order could not be finalized until the Board had heard and disposed of the motion for consolidation.

[29] While a number of issues have been identified in the original proceedings, the Board is also aware that further refinement may be both necessary and desirable to distill a final issue list for the consolidated proceedings.

[30] The parties agree that within three weeks of the May 7, 2014 appearance the parties will file their refined issue list with the City. The parties further agree that within three weeks of receiving the refined issue list the City will prepare a consolidated issue list and procedural order.

[31] Once agreed to by the parties, the draft procedural order and issue list is to be forwarded to the Board.

Parties and Participants

[32] As noted above, a large number of parties and participants did not attend for the motion or this pre-hearing. The City has agreed to contact all parties and participants to the original proceedings to determine if they intend to take an active part in the consolidated hearing.

[33] Dr. Tom Nugent, a party to the AEGD matter, indicated to the Board that he felt his concerns and interests would be met with participant status. Hearing no objection, the Board has granted Dr. Nugent this change in status. Dr. Nugent is now a participant

in these proceedings.

[34] The Board was advised that Antony Wellenreiter, Counsel to Craig Smith, was unable to attend this appearance as a result of a conflict with Court dates. Mr. Wellenreiter advised that Mr. Smith, a party to these proceedings, intended to take an active role in the hearing of the merits.

[35] Participant Peter O'Hagan attended this appearance and confirmed his continued interest in these proceedings.

Hearing Scheduled

[36] Based on a brief scan of the number of expert witnesses the parties in attendance at this pre-hearing intend to call in the hearing of the merits, the Board is satisfied that four weeks of hearing time is appropriate. The parties had originally hoped to have a hearing in late 2014. While the Board's calendar could not accommodate a hearing of this length in late 2014, the parties understood that the Board would set the hearing date as early as possible in 2015.

[37] The Board advised the parties at this appearance that two further appearances were scheduled: the hearing of the merits and the next pre-hearing, details of each of these is set out below.

[38] No party objected to either date.

[39] With such substantial lead time for the hearing of the merits, and with the large number of parties and participants in this matter, the Board expects parties to make whatever arrangements are necessary to move these matters forward in keeping with this schedule.

[40] The hearing will commence on **Monday, February 2, 2015 at 11 a.m. at:**

**Crowne Plaza Hamilton Hotel & Conference Centre
Royal Pavilion A
150 King Street East
Hamilton, ON**

[41] No further notice will be given.

Pre-Hearing Conference Scheduled

[42] At the request of the parties, the Board has also scheduled a further pre-hearing conference to deal with any matters that may arise from the procedural order and to review the time allotted to the hearing of the merits.

[43] This pre-hearing conference will commence on **Tuesday, July 29, 2014 at 10 a.m. at:**

**McMaster Learning Centre
OMB Hearing Room #6
50 Main Street East
Hamilton, ON**

[44] No further notice will be given.

ORDER

[45] The Board orders that:

1. The motion for consolidation brought by the City of Hamilton is allowed in part as set out above.
2. The hearing of the merits and the next pre-hearing conference are scheduled as set out above.
3. Parties and participants to the original appeals are parties and participants to the consolidated proceeding, subject to any restrictions imposed on the party or

participant in the original proceeding.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248