

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: June 22, 2018

CASE NO(S): PL140601

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PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	2261305 Ontario Inc.
Appellant:	549367 Ontario Ltd.
Appellant:	783878 Ontario Ltd.
Appellant:	Nick and Anna DeFilippis; and others
Subject:	Proposed Official Plan Amendment No. 17 UHOP
Municipality:	City of Hamilton
OMB Case No.:	PL140601
OMB File No.:	PL140601
OMB Case Name:	DeFilippis v. Hamilton (City)

Heard: January 5, 2018 in Hamilton, Ontario and
May 25, 2018 by telephone conference call

APPEARANCES:

Parties

Counsel/Representative*

City of Hamilton

Joanna Wice
Michael Kovacevic

Petar Djeneralovic
2261305 Ontario Inc.
Nick and Anna DeFilippis

Sean Gosnell
Isaac Tang (in absentia)

Ray Bucci
783878 Ontario Ltd.
c.o.b. Bucci Homes

Michael Connell

2294643 Ontario Inc. (“Movengo”)

Raj Kehar
Mary Bull (in absentia)

549367 Ontario Ltd.

Victor Fontana

DECISION DELIVERED BY J.V. ZUIDEMA AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This decision involves the Urban Hamilton Official Plan Amendment (“UHOPA 17”) which also includes the Fruitland-Winona Secondary Plan (“FWSP”). There have been a number of Pre-Hearing Conferences (“PHC”) as well as Telephone Conferences Calls (“TCC”) in the past associated with UHOPA 17 wherein the Board, as it was previously constituted, case managed the various appeals.

[2] In some instances, appeals were withdrawn. In other instances, appeals were dismissed, settled or scoped and decisions arising from those hearing events have been issued. The reader is directed to those earlier dispositions for the history and background of the matters associated with UHOPA 17.

[3] This particular decision addresses two matters:

- a. A Motion (“Contested Motion”) brought by the City of Hamilton (“City”) for an Order declaring the FWSP is approved in its entirety, except those lands subject to specific appeals, as set out in the City’s Amended Motion pages 4 to 6 of Exhibit 2. This Motion was contested by Petar Djeneralovic, 2261305 Ontario Inc., and Nick and Anna DeFilippis (“Respondents”).

Although Valery Homes Stoney Creek Limited (“Valery Homes”) was listed with the Respondents in the Response Motion materials (filed as Exhibit 3), Valery Homes did not and does not have party standing. A Motion for Party Status for Valery Homes had been filed but adjourned in the past and to date, that motion has not been argued.

The Contested Motion was heard on January 5, 2018 but at the request of the parties, a decision was not issued until another Motion, listed below was finalized; and,

- b. A Settlement Motion brought by the City concerning an appeal launched by 549367 Ontario Ltd. This Motion was heard via TCC on May 25, 2018.

Settlement Motion:

[4] I will address the Settlement Motion first as it was uncontested. I received a sworn affidavit from professional land use Planner, Ms. Alissa Mahood. She is the in-house City Planner having carriage of these matters. Her affidavit, filed as Exhibit 6, was thorough and complete. She methodically and cogently set out the circumstances which led up to the settlement.

[5] In a nutshell, two schools had been identified by the Hamilton Wentworth District School Boards to be needed for the area. Over time, that position changed and only one school was necessary. The request was to re-designate the area for one of the school sites from “Institutional” to “Medium Density Residential.”

[6] This particular appeal was the only remaining appeal of the entire plan and given this settlement, that would no longer be the case. The City was anxious to have the FWSP in place, save and except for those portions subject to site specific appeals.

[7] The opinions which Ms. Mahood expressed were not challenged by any other party during the TCC. She opined that the proposed settlement met all the requisite statutory requirements, conformed to or were consistent with, as the case may be, to the operative provisions of provincial policy, represented good and proper planning and were in the public interest.

Settlement Order:

[8] I was satisfied with the evidence as presented in her affidavit. As such, I provided an oral decision granting the Settlement Motion. For specificity, the Tribunal orders the following modifications:

- a. Map B.7.4-1 to UHOPA 17 is modified to change the designation of a portion of 549367’s lands from “Institutional” to “Medium Density Residential” and remove those lands from Area Specific Policy – Area C. The map changes as noted are reflected in the Land Use Plan Map B.7.4.1 which was appended to Ms. Mahood’s affidavit as Exhibit “I”. For ease of reference, that map is attached to this decision and marked as Attachment 1; and

- b. The text of UHOPA 17 is modified to reflect the above-noted designation change as follows:
- i. Section 7.4.18.3 shall be modified by changing the reference of two elementary schools to one elementary school; and
 - ii. Section 7.4.18.3(b) shall be modified by deleting the reference to the Hamilton Wentworth District Catholic School Board; and finally,
 - iii. Section 7.4.18.3(f) shall be modified by removing the plural reference to schools and referring to school in the singular.

Contested Motion:

[9] Now I come to the decision on the contested Motion described earlier in this decision. The City's Motion is granted. Below are my reasons and analysis for this decision.

[10] I should also indicate that during the TCC assigned to hear the Settlement Motion as discussed above, Mr. Gosnell, counsel for the Respondents on this Contested Motion sought to have the Contested Motion re-opened as in his view, some additional information provided to him by the City following the hearing of the Motion in January, would result in a change in his earlier position.

[11] That assertion was disputed by counsel for the City, Mr. Kovecevic. Mr. Kovecevic explained that firstly, the materials given to Mr. Gosnell were to have been treated on a "without prejudice" basis and secondly, despite Mr. Gosnell's advice to the Tribunal, the City's position on the earlier Motion had not changed. The City resisted the re-opening of that earlier Motion.

[12] Following hearing reply submissions from Mr. Gosnell, I determined that I would not re-open the Motion. A decision would follow based on the evidence and submissions heard in January 2018.

[13] At the heart of the dispute between Respondents and the City is whether or not the appeals launched include a parcel of land referred to as "Blocks 1 and 2" and whether or not those Blocks are to be included in the terms "adjacent lands."

[14] I heard from Mr. Mathew Johnston, who was qualified and accepted as an expert

in land use planning. He testified that a broad definition should be accepted for the term “adjacent lands” and that the limits of the natural heritage features have an impact on certain properties, including those of his clients. He opined that any land holdings impacted by natural heritage features should be included into the appeal.

[15] Under cross-examination by Ms. Wice, counsel to the City, Mr. Johnston indicated that the terms “adjacent” and “abutting” were identical in their application.

[16] However, when one looks to the map which identifies the specific land holdings of each of the remaining appellants (Exhibit 1, Tab 2(D)), it is clear that lands adjacent to or abutting those land holdings do not comprise of the entirety of Blocks 1 and 2.

[17] That map shows three of the appellants’ land holdings are contained in one Block while the remaining fourth is located in the second Block. Just because the appellants have chosen to label themselves as “Blocks 1 and 2” appellants does not mean their respective appeals are to cover the entirety of those large Blocks of land.

[18] An argument forwarded by the Respondents was that once information on the Block Servicing Strategy (“BSS”) was provided by the City, only then could the Respondents refine their appeals to identify which parcels should be included and which should not or in other words, set out clearly what adjacent lands should be included in the appeals.

[19] There are a few problems with this approach. First, Mr. Johnston acknowledged that “adjacent” and “abutting” can be used interchangeably. I agree with his conclusion. Both terms suggest parcels are “next to” or “adjoining” or “neighbouring” or “contiguous” in some way. When one views the map, there are numerous parcels of land within both Blocks that simply do not fit with this description.

[20] So on the plain and simple assessment of whether all the lands within Blocks 1 and 2 constitute “adjacent lands,” I determine that they do not.

[21] The other approach is to remedy the problem that is created when appeals go beyond the interests of the appellants to landholdings of others.

[22] In Mr. Michael Crough’s affidavit, a professional land use Planner retained by the Respondents, which affidavit was filed as Exhibit 3 Tab 2, he opined that “the extent of adjacent lands cannot be reasonably determined at this time.” [see paragraph 22]. He states at paragraph 17:

In my opinion, before the Block 1 Landowners can scope their appeals to a narrower geographical area, they must be able to access the same documents that the City has in its possession regarding the natural heritage features on Blocks 1 and 2 of the BSS. Without this information, the Block 1 Landowners would be at a disadvantage as they do not know the extent of lands that they need to hold back from appeal to ensure that they are able to fairly challenge the location, delineation or existence of the natural heritage feature(s) on their lands. [underlined emphasis added by the Tribunal]

[23] Mr. Johnston echoed this same approach during his testimony.

[24] The problem with this approach is that the focus seems to be on the geography and not on the policies which affect the specific land holdings. Clearly the issue of natural heritage features on the Appellants' lands is front and centre. That issue can be maintained for the hearing proper.

[25] Mr. Crough's affidavit sets out the specific policies which are at issue for the various appellants [see paragraph 21] but seeks to have those policies held under appeal not only for the appellants' lands but also for the adjacent lands, again which are not determined.

[26] It is unreasonable to stall the enforcement of a planning instrument on lands which neither fit the description of "adjacent" nor form part of the Appellants' land-holdings.

[27] For the foregoing reasons, the City's Motion is granted and further partial approval of UHOPA 17 is granted. Specifically, the Tribunal orders that the FWSP is approved in its entirety, except those lands subject to the site specific appeals as set out in the City's Amended Notice of Motion, filed as Exhibit 2, at Tab 1, paragraph 1.

"J.V. Zuidema"

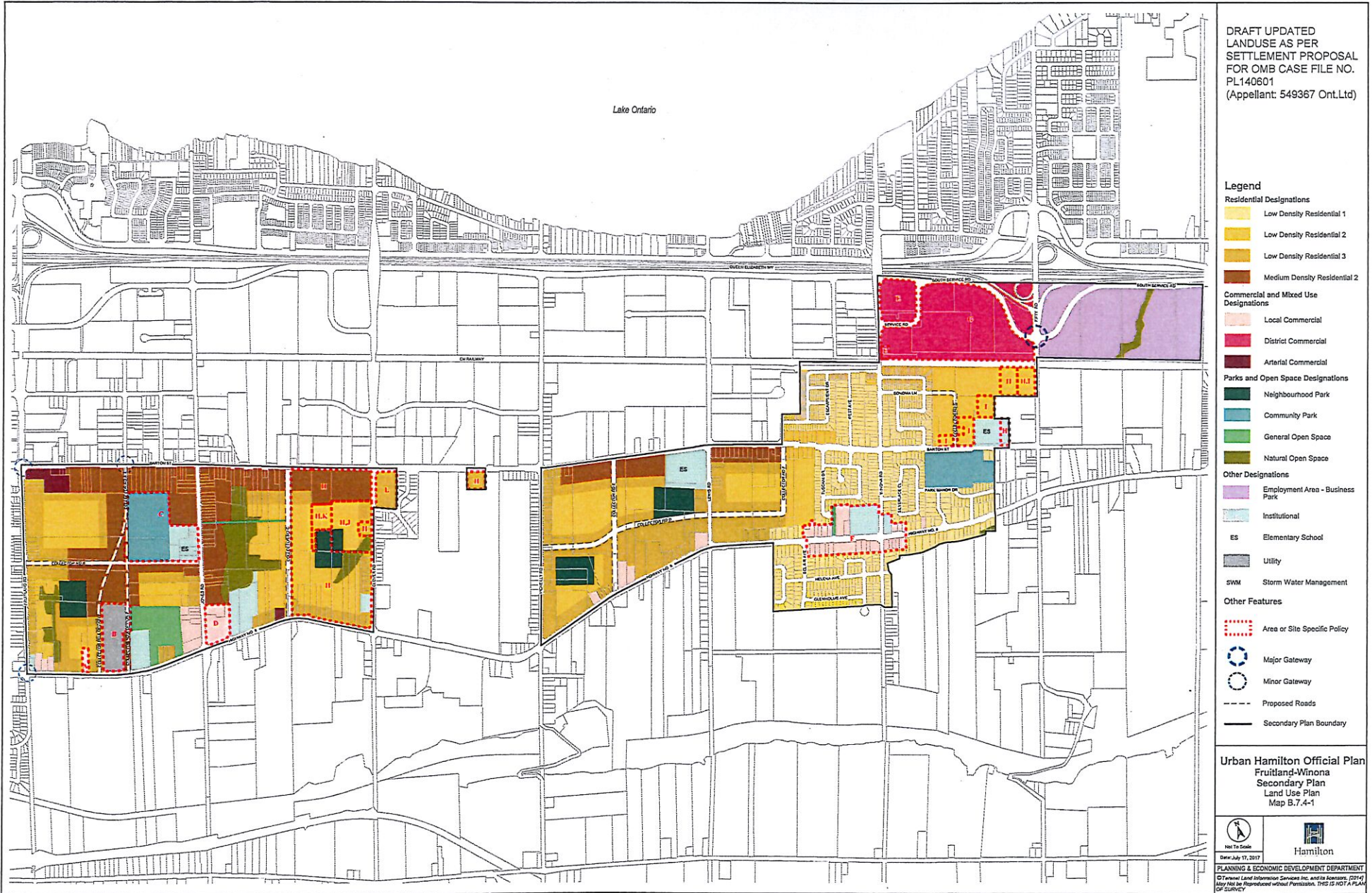
J.V. ZUIDEMA
VICE-CHAIR

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please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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



DRAFT UPDATED
LANDUSE AS PER
SETTLEMENT PROPOSAL
FOR OMB CASE FILE NO.
PL140601
(Appellant: 549367 Ont.Ltd)

- Legend**
- Residential Designations**
- Low Density Residential 1
 - Low Density Residential 2
 - Low Density Residential 3
 - Medium Density Residential 2
- Commercial and Mixed Use Designations**
- Local Commercial
 - District Commercial
 - Arterial Commercial
- Parks and Open Space Designations**
- Neighbourhood Park
 - Community Park
 - General Open Space
 - Natural Open Space
- Other Designations**
- Employment Area - Business Park
 - Institutional
 - ES Elementary School
 - Utility
 - SWM Storm Water Management
- Other Features**
- Area or Site Specific Policy
 - Major Gateway
 - Minor Gateway
 - Proposed Roads
 - Secondary Plan Boundary

Urban Hamilton Official Plan
Fruitland-Winona
Secondary Plan
Land Use Plan
Map B.7.4-1

Map to Scale
New July 10, 2017

Hamilton

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