

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 30, 2015

CASE NO(S):

PL140601

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

Appellant: 549367 Ontario Limited
Appellant: 783878 Ontario Limited
Appellant: 820 Barton St. Inc.
Appellant: Elsie and Jim Chappel; 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: Chappel v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 17(45) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Motion Request By: City of Hamilton
Purpose of Motion: Request for an Order Dismissing the Appeals
Appellant: 2261305 Ontario Inc.
549367 Ontario Ltd.
Elsie Chappel and Jim Chappel
Gino Dal Bello and Olindo Dal Bello
Anna DeFilippis and Nick DeFilippis
Cal DiFalco and Teresa DiFalco
Cristina Di Saverio and Filippo Di Saverio
Christopher Douglas
Marion Fazackerley-Walford and Wally Walford
Gisele Rottaris and Vic Rottaris
Alberto Volpini and Nicoletta volpini
Correena Walford
Marion Walford-Fazackerley
Clarence Walford-Fazackerley
Subject: Proposed Official Plan Amendment No. 17
Municipality: City of Hamilton
OMB Case No.: PL140601
OMB File No.: PL140601

Heard: June 8 and 9, 2015 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel/Representative*

City of Hamilton

Michal Minkowski, and
Michael Kovacevic

2261305 Ontario Inc.; Gina Dal Bello;
Olindo Dal Bello; Peter Djeneralovic;
Anna DeFilippis; Nick DeFilippis

Manfred Rudolph

549367 Ontario Ltd.

Dennis Trinaistich

820 Barton Street Inc.

Anna Toumanians*

783878 Ontario Ltd. (Bucci Homes)
and Penady (Stoney Creek) Ltd.

Denise Baker

1312733 Ontario Inc.; Branthaven
Fruitland Inc.; Branthaven Winona
Hills Inc.

Nancy Smith

2294643 Ontario Inc. (Movengo)

Mary Bull

Horizon Utilities Corporation

Robert Wood

Elsie and Jim Chappel, Grant Cook,
Cal DiFalco, Teresa DiFalco, Cristina
Di Saverio, Filippo Di Saverio, Marion
Fazackerley-Walford, Wally Walford,
Gisele Rottaris, Vic Rottaris, Alberto
Volpini, Nicoletta Volpini, Correena
Walford, Marion and Clarence
Walford-Fazackerley, and
Christopher Douglas

Virginia MacLean

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON AND ORDER
OF THE BOARD**

BACKGROUND

[1] This is the second pre-hearing conference on the matter of a number of appeals against the Fruitland-Winona Secondary Plan, which is also known as Amendment No. 17 (“UHOPA 17”) to the Urban Hamilton Official Plan (“UHOP”).

[2] Upon the approval of UHOPA 17, the lands identified will be incorporated into the urban area of Hamilton and will be subject to the policies of the UHOP. The effect of UHOPA 17 is to amend various policies of the UHOP to reflect the principles, policies, land use designations and land use categories in UHOPA 17 and to establish a policy framework to guide development and re-development of lands within the Fruitland-Winona planning area.

MATTERS BEFORE THE BOARD

[3] Several matters were before the Board for this second pre-hearing conference, including:

1. Motions for Party Status.
2. The partial approval of two applications for site-specific amendments to the UHOP by Penady (Stoney Creek) Ltd. and 2294643 Ontario Inc.
3. The City’s motion for dismissal without a hearing of the appeals of those appellants represented by Ms. McLean. Submission of draft consolidated issues list with proposed Groupings of the issues – comment – no idea what a Grouping of the issues is.
4. Upcoming hearing events scheduled for 2015.
5. Upcoming hearing event scheduled for 2016.

MOTION TO DISMISS THE APPEALS OF ELSIE AND JIM CHAPPEL ET AL WITHOUT A HEARING

Position of the Appellants

[4] Ms. MacLean, advised that her clients' have filed a request for review (pursuant to s 43 of the OMBA) of this Member's earlier decision to dismiss appeals without a hearing at the last prehearing conference. That request is before the Chair and remains under consideration. She asked the Board to defer hearing the City's motion to dismiss appeals of her clients' until the outstanding request for review is decided..

Position of the City of Hamilton

[5] Michael Minkowski, counsel for the City contended first that the request for an OMBA s. 43 review filed by Ms. McLean's clients' Elsie and Jim Chappel et al would not be impacted in any way by the City's Motion. He also contended that Ms. MacLean failed to file a Notice of Response to the City's Motion within the required 10-day time period and that pursuant to Rule 63 of the Board's *Rules of Practice and Procedure* ("Rules"), the Board should not accept her request to adjourn.

Decision

[6] After consideration of the submissions of counsel, the Board finds that consideration of the City's Motion to Dismiss should be adjourned until the Chair has disposed of the request. It is the view of this Board that this approach represents the most efficient use of this Board's time. The next prehearing conference of this Board is set in August and this Board has other procedural matters that can be disposed of at this prehearing conference, to facilitate the resolution of other appeals to OPA 17. The Board recognizes that a s 43 request does not act as a stay or adjournment of a proceeding. This principle is not undermined by this deferral, given this is only a brief adjournment to the City's motion and there may be an interrelationship between the appeals the City seeks to dismiss in the current motion and the subject matter of the

request The Board expects the City's Motion will be heard on August 13, 2015. The Board directs that the City is under no obligation to submit further Motion documentation beyond those documents submitted before June 5, 2015. One of those documents was identified as "Motion Record re: appeal by Cal and Teresa DiFalco". The others are similarly identified with the name of an Appellant.

[7] Notices of Response from the Appellants will be submitted in a timely manner according to the Board's Rules.

MOTIONS FOR PARTY STATUS

[8] The Motions for Party status by the following were not opposed:

- Penady (Stoney Creek) Ltd.
- 1312733 Ontario Inc.
- Branthaven Fruitland Inc.
- Branthaven Winona Hills Inc.
- 2294643 Ontario Inc. (Movengo)
- Horizon Utilities Corporation.

APPEALS HEARD

[9] The appeal of 2294643 Ontario Inc. to amend the UHOP as it pertains to its 3.6 hectares ("ha") of lands, municipally known as 1290 South Service Road, which are located south of South Service Road/Queen Elizabeth Way and east of Winona Road, in order to bring UHOPA No. 17 into effect as it pertains to its lands, was not opposed.

[10] The Board accepted the uncontested and unopposed affidavit evidence of John Ariens, which was entered in evidence as Exhibit 2M2, and finds that the proposed amendment to the UHOP conforms to the provisions of the Growth Plan for the Greater Golden Horseshoe, as well as to the policies of the UHOP and represents good planning.

[11] Further, the appeal of Penady (Stoney Creek) Ltd. to amend the UHOP as it pertains to its 17.51 ha municipally known as 1310 South Service Road and located south of the South Service Road/Queen Elizabeth Way and west of Fifty Road, in order to bring UHOPA 17 into effect as it pertains to its lands, was not opposed.

[12] The Board accepted the uncontested and unopposed affidavit evidence of David A. McKay, which was entered in the evidence as Exhibit 2M4, Tab 4A, and finds that the proposed amendment to the UHOP conforms to the provisions of the Growth Plan for the Greater Golden Horseshoe, as well as to the policies of the UHOP and represents good planning.

ORDER

[13] The Board orders that the Motion for Party Status of Horizon Utilities Corporation is allowed.

[14] The Board orders that the Motions for Party Status by 1312733 Ontario Inc.; Branthaven Fruitland Inc.; and Branthaven Winona Hills Inc. are allowed.

[15] The Board orders that the Motion for Party Status by 2294643 Ontario Inc. (Movengo) is allowed.

[16] The Board orders that the appeal of 2294643 Ontario Inc. (Movengo) is allowed and partial approval of UHOPA No. 17 is given. The sections of UHOPA No. 17 that are approved by this Order are listed in Exhibit 2M2, Tab 2, pages 14-16.

[17] The Board orders that the Motion for Party Status by Penady (Stoney Creek) Ltd. is allowed.

[18] The Board orders that the appeal of Penady (Stoney Creek) Ltd. is allowed and partial approval of UHOPA No. 17 is given. The sections of UHOPA No. 17 that are approved by this Order are listed in Exhibit 2M4, Tab 3, pages 13 and 14.

FUTURE EVENTS

[19] A third pre-hearing will be held **on Thursday and Friday, August 13 and 14, 2015 commencing at 10 a.m. at:**

**Dundas Town Hall
2nd Fl. Auditorium / OMB Room
60 Main Street E. Dundas
Hamilton, ON L9H 2P8**

- At this pre-hearing, the City's Motion for Dismissal without a hearing of the appeals of Elsie and Jim Chappel et al will be heard
- Any unresolved issues after negotiations between the City and 549367 Ontario Ltd. cease, will be litigated
- A draft final consolidated list of the issues to be litigated at Phase I of the hearing will be considered
- If required at this time a fourth pre-hearing conference may be scheduled for January 2016.

[20] Phase I of the hearing is scheduled for **four weeks beginning Tuesday, November 3, 2015 commencing at 10 a.m. at:**

**Dundas Town Hall
2nd Fl. Auditorium / OMB Room**

**60 Main Street E. Dundas
Hamilton, ON L9H 2P8**

The issues have been organized into 14 groups, five of which will be litigated in this first Phase:

- Group 1, which includes natural heritage issues, will begin November 3, 2015. (The natural heritage issues in the appeals of Peter Djeneralovic and 820 Barton Street Inc. will not be considered until their judicial proceedings into the removal of trees have concluded).
- Group 2, which includes community parks and schools issues, will commence November 16, 2015.
- Groups 3, 4 and 5, which include issues concerning building height and density as well as neighbourhood parks, will begin November 9, 2015.

[21] Phase II of the hearing is scheduled for seven days beginning **Monday March 7, 2016 commencing at 10 a.m. at:**

**Dundas Town Hall
2nd Fl. Auditorium / OMB Room
60 Main Street E. Dundas
Hamilton, ON L9H 2P8**

The remaining issues will be litigated in this Phase II. These include Pedestrian Promenade/Right of Way (Group 6) and Farming (Group 9).

[22] On consent of the Parties, Issue 10, dealing with the “District Commercial” designation of the lands generally located south of the QEW and west of Fifty Road, has been deleted.

[23] Depending on the outcome of the OMBA s. 43 review and the Motion to Dismiss (without a hearing) a portion of the appeals of Elsie and Jim Chappel et al, the issues listed in Groups 11 – 14 (Exhibit 2M6) as well as the issues raised by Elsie and Jim

Chappel et al in the February 3, 2014 pre-hearing may be scheduled for litigation in either Phase I or Phase II.

"C. Hefferon"

C. HEFFERON
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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