Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

Ontario

ISSUE DATE: November 26, 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:	2261305 Ontario Inc.
Appellant:	549367 Ontario Ltd.
Appellant:	783878 Ontario Ltd.
Appellant:	Gino and Olindo Dal Bello; 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:	Dal Bello v. Hamilton (City)

Heard: August 2015 and October 2015

APPEARANCES:

Parties	**Counsel*/Representative**
820 Barton Street Inc.	A. Toumanians* and S. Snider* (*in absentia*)
549367 Ontario Ltd.	D. Trinaistich*
783878 Ontario Ltd. (cob Bucci Homes)	D. Baker*
Penady (Stoney Creek) Ltd.	D. Baker* and J. Meader*

Anna and Nick DeFilippis Gino and Olindo DalBello Peter Djeneralovic 2261305 Ontario Inc.	M. Rudolph*
City of Hamilton	M. Kovacevic*
1312733 Ontario Inc. Branthaven Fruitland Inc. Branthaven Winona Hills Inc.	A. Toumanians (Agent for N. Smith*)
229463 Ontario Inc. (cob Movengo)	M. Bull* and J. Shapira* (both *in absentia*)

DECISION OF THE BOARD DELIVERED BY J.V. ZUIDEMA

INTRODUCTION

[1] A number of Pre-Hearing Conferences ("PHC") had been convened on this matter previously by the Board differently constituted. Dispositions arising from those PHCs were issued and in some cases, amended. The reader is directed to those earlier decisions and correspondence from the Board to ascertain the history and context of the matter.

[2] A two-day PHC was scheduled to address the matter before the Board, namely Urban Hamilton Official Plan Amendment #17 ("UHOPA #17") also referred to as the Fruitland/Winona Secondary Plan. That was held on August 13 and 14, 2015.

[3] On the first day, Mr. Dennis Trinaistich, Counsel to 549367 Ontario Ltd., an appellant in these proceedings, was not in attendance. None of the other lawyers present had received any communication from Mr. Trinaistich about his whereabouts and neither had the Board.

[4] I stood down for 30 minutes as required by the Board's *Rules of Practice and Procedure*. When I returned, Mr. Victor Fontana, a shareholder of the appellant numbered company was in attendance. He explained that he had just received a call from Mr. Trinaistich stating that Mr. Trinaistich was ill and would not be able to attend that day but would attend the following day.

[5] The City of Hamilton ("City") had brought a motion to dismiss pursuant to subsection 17(45) of the *Planning Act* against Mr. Trinaistich's client which was returnable the first day of the two-day PHC. Given these circumstances, the Motion was put over to the following day.

[6] Other counsel however asked that some of the housekeeping matters, such as the confirmation of those who were still involved in these proceedings as parties or participants and scheduling of future dates be addressed as they would not be able to attend the following day. To accommodate schedules of those in attendance, the Board arranged future dates and confirmed the following:

a. The following appeals had been withdrawn and correspondence from Ms. Virginia McLean, counsel to these appellant had been sent to the Board to finalize the withdrawals:
    i. Alberto and Nicoletta Volpini
    ii. Cal and Teresa DiFalco
    iii. Christopher Douglas
    iv. Clarence Walford and Marion Walford-Fazackerley
    v. Correena Walford
    vi. Cristina and Filippo Di Saverio
    vii. Elsie and Jim Chappel
    viii. Gisele and Vic Rottaris
    ix. Marion Fazackerley-Walford and Wally Walford
    x. Grant Cook
b. The following appeal was withdrawn based on correspondence received

from Mr. Jack Restivo, counsel for Ms. Restivo, sent to the Board June 1, 2015:

i. Sharon Restivo.

c. The following remained as appellants:

i. 549367 Ontario Ltd. represented by Mr. Trinaistich.

ii. Gino and Olindo Dalbello; Peter Dejeneralovic; 2261305 Ontario Inc.; Nick and Anna DeFillippis all represented by Mr. Manfred Rudolph. The Board was advised that portions of the Dalbello appeal would be addressed through the refinement of the issues list and that was still in progress.

iii. 820 Barton Street Inc. represented by Ms. Anna Toumanians and Mr. Scott Snider, although Mr. Snider was not present at this PHC.

iv. 783878 Ontario Ltd. cob as Bucci Homes represented by Ms. Denise Baker.

d. The following remained as parties to the proceedings:

i. 131273 Ontario Inc.; Branthaven Fruitland Inc.; Branthaven Winona Hills Inc. represented by Ms. Nancy Smith although she was not present and Ms. Toumanians was appearing as Agent for those entities.

ii. Penady (Stoney Creek) Ltd. represented by Ms. Baker and Ms. Jennifer Meader, who also was not present.

iii. 229463 Ontario Inc. also known as Movengo represented by Ms. Mary Bull and Ms. Johanna Shapira. Both Ms. Bull and Ms. Shapira were not in attendance but the Board was advised that they had written to indicate that neither would be in attendance.

e. The following party requested their status be recognized as a participant rather than party and that was confirmed:

i. Horizon Utitlites Corp. represented by Mr. Robert Wood. Mr. Wood was also not in attendance but had written to the Board seeking participant status.

f. The Board also scheduled the following future hearing events:

   i. A Telephone Conference Call ("TCC") amongst the parties for **October 20, 2015 at 9 a.m.** with the call-in code of 8382912. I conducted this TCC.

   ii. A PHC on **February 9, 2016 at 10 a.m.** at the **Dundas Town Hall, 60 Main Street, Dundas** and I will conduct this PHC.

   iii. Phase 2 of this hearing for two weeks to commence **June 13, 2016 at 10 a.m. also at the same venue.** I am not necessarily seized of this hearing or of the November 2015 dates currently scheduled.

g. Further to this appearance, correspondence was received from Ms. Toumanians that 820 Barton Street Inc. had also withdrawn.

CITY'S MOTION TO DISMISS

[7] And now I turn to the Motion which was heard the following day. Mr. Trinaistich was in attendance and confirmed that he had not contacted the Board concerning his absence. The City's Motion materials were served and filed on or about May 28, 2015. There were no Response materials filed. There was no issue that the City's Motion had been received early June 2015 so by the time this Motion was heard, Mr. Trinaistich had had the materials for about 2 ½ months.

[8] When asked why a Response was not filed, Mr. Trinaistich said it was because his and his Planner's efforts were focussed on settlement negotiations. While that may be so, no communication between Mr. Trinaistich to the Board or to the City was given to explain this.

[9] Mr. Michael Kovacevic, counsel to the City, argued that I should not permit Mr. Trinaistich to make any oral Response at this stage because of his not filing a written Response. He said that allowing oral submissions at this point would reward such "bad behaviour" and would be prejudicial to his client.

[10] Under the *Statutory Powers Procedure Act*, the Board controls its process. In this instance, while Mr. Kovacevic argues a technical argument, I permitted Mr. Trinaistich to make oral submissions in Response despite the fact that no formal Response had been filed.

[11] I was of the view that the prejudice to Mr. Trinaistich's client to not be able to make any submission whatsoever would be greater than that to the City. I recognized that no evidentiary material had been filed on behalf of the Respondent and further that Mr. Trinaistich had not exercised his right to cross-examine Ms. Mahood, the Planner who had filed the Affidavit on behalf of the City, which Affidavit was in support of the Motion.

[12] In any event, following the hearing of this Motion, the Board was asked to not render a decision on this Motion as the City and Mr. Trinaistich's client had come to a compromise. Correspondence received October 5, 2015 from Mr. Trinaistich set out the particulars and I include them given that they are on consent between the City and Mr. Trinaistich's client. Specifically as set out in Mr. Trinaistich's correspondence:

> The City consents to reinstating my client's appeal with respect to the eastern portion of the Secondary Plan, but limited to the underlying policy issues raised in my original Notice of Appeal dated June 05, 2014; more specifically, policies 7.4.17.11 and 7.4.18.3. In other words the appeal would not include other policies, designations, schedules or appendices as they apply to the eastern portion of the Fruitland-Winona Secondary Plan.
>
> My client consents to the relief requested in the City's motion, heard August 14, 2015, to dismiss a portion of my client's appeal; more specifically, the dismissal of the portion of the appeal raised in Issues # 9 through 13, as provided by me on February 27, 2015. These issues would not be included in the final Issues List.
>
> As previously noted at OMB PHC # 2 on June 30, 2015, the parties agree to the rewording of my Issues # 1, 7 and 9, as set out in Mr. Kovacevic's letter dated April 30, 2015.
>
> Except as otherwise noted above, the parties agree that the balance of the Issues provided by me, dated February 27, 2015 (Issues # 2 through 6) shall remain intact, as originally worded therein.
>
> The parties agree that they will not request any Order as to costs.
>
> The parties will be jointly requesting, on consent, that the Board issue an Order that reflects the above.

[13] Given the above, the Board received a revised Procedural Order and Final Issues List (Attachment 1) which are appended and govern these proceedings. This reflects the submissions made to the Board at the TCC held on October 15th between Messrs. Kovecevic and Trinaistich.

[14] Further pursuant to the TCC held on October 20, 2015, the Board provided oral directions that Reply materials were due 11 days prior the hearing start of November 16th at 10:30 a.m. Mr. Kovecevic indicated that he would circulate settlement materials to the parties after his municipal Council had addressed it and assuming there was endorsement by his client on November 12th with responses from parties required the following day, November 13th. For the time being, the Board would maintain the dates scheduled for this hearing in March and June and the February 9, 2016 PHC.

[15] I will continue to case manage and conduct the February 9, 2016 PHC.

"J.V. Zuidema"

J.V. ZUIDEMA
VICE-CHAIR

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

ATTACHMENT 1

PL140601

ONTARIO MUNICIPAL BOARD

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.; and others**
Subject:	**Proposed Official Plan Amendment No. 17 UHOP**
Legislative Authority:	**Subsection 17(24) of the Planning Act, R.S.O. 1990, c.P.13, as amended**
Municipality:	**City of Hamilton**
OMB Case No.:	**PL140601**
OMB File No.:	**PL140601**

PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. Phase 1 of the hearing will begin on **November 16, 2015** at **10:30 a.m.** at **Dundas Town Hall, 2nd Floor Auditorium (OMB Room), 60 Main St., Dundas** and will continue on March 7, 2016 and continue again on June 13, 2016. The groups to be litigated in Phase 1 of the hearing will be Groups 2, 3 and 5.

3. (a) The total length of the hearing will be about eleven **(11)** days.

(b) The site specific appeal of Gino and Olindo DalBello regarding the lands municipally known as 860 and 884 Barton Street, Hamilton, will be heard from November 16 to November 18, 2015 ("Phase 1(a)").

(c) The appeal of 549367 Ontario Ltd. will be heard from March 7 to March 11, 2016 (Phase 1(b)).

(d) The site specific appal of 783878 Ontario Ltd. regarding the lands municipally known as 228 McNeilly Road, 244 McNeilly Road and 1069 Highway No. 8, Hamilton the hearing will be heard from June 13 to June 15 subject to availability as determined by the Board at the February 9, 2016 prehearing (Phase 1(c)).

4. (a) The parties and participants identified at the prehearing conferences for **Groups 3 and 5** are: City of Hamilton; Gino and Olindo DalBello; 783878 Ontario Ltd. (Bucci Homes).; Branthaven Winona Hills Inc., 131273 Ontario Inc., Branthaven Fruitland Inc; 2294643 Ontario Inc.; and, Horizon Utilities Corp.

(b) The parties and participants identified at the prehearing conferences for **Group 2** are: City of Hamilton; 549367 Ontario Ltd.; Branthaven Winona Hills Inc., 131273 Ontario Inc., Branthaven Fruitland Inc; 2294643 Ontario Inc.; and, Horizon Utilities Corp.

5. The Issues for Phase 1 of the hearing are set out in the Issues List attached as **Attachment #1**. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

6. The order of evidence shall be in accordance with **Attachment #2**.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **September 9, 2015**. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.

8. If any party intends to challenge the qualifications of an expert witness and object to the expert witness testifying at the hearing they shall do so by way of the service and filing of a notice of motion by **September 15, 2015** returnable on October 20, 2015 (to be heard by way of a teleconference). Any responding materials to such a motion shall be filed by **September 22, 2015.**

9. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 10. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

10. A witness must provide to the Board and the parties a witness statement on or before **October 9, 2015**, or the witness may not give oral evidence at the hearing.

11. A participant must provide to the Board and the parties a participant statement on or before **October 16, 2015**, or the participant may not give oral evidence at the hearing.

12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in section 10.

13. (a) For Phase 1(a) of the hearing on or before **November 5, 2015**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

(b) For Phase 1(b) of the hearing on or before **February 29, 2016**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

(c) For Phase 1(c) of the hearing on or before **June 6, 2016**, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

14. (a) For Phase 1(a) of the hearing the Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before **November 5, 2015.**

(b) For Phase 1(b) of the hearing the Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before **February 25, 2016**

(c) For Phase 1(c) of the hearing the Parties may provide to all other parties and file with the Clerk a written response to any written evidence on or before **June 2, 2016.**

15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules 34 to 38.

16. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, facsimile, email, registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

19. The purpose of the Procedural Order and the meaning of the terms used in the Procedural Order are set out in **Attachment #3**.

This Member is [not] seized.

So orders the Board.

ATTACHMENT #1 (To Procedural Order)

Issues List for Phase 1

ISSUES LIST AND GROUPINGS - August 11, 2015 - PROPOSED OFFICIAL PLAN AMENDMENT NO. 17 UHOP - OMB CASE NO. PL140601

Group	Grouping Topic	Appellant # and Name	Issues
1	Natural Heritage	#3 Peter Djeneralovic (238/252 Jones Road)	1. Should any of the subject or adjacent lands be designated Natural Heritage? 2. Should any of the proposed Natural Heritage designations on the subject or adjacent lands not be appropriate, what is the appropriate designation for those lands?
		#11 2261305 Ontario Inc. (Tony Nigro - 212 Fruitland Road)	1. Are there any actual physical features present on the subject property and adjacent lands that support the identification on Appendix A/ Schedule B of a core area and linkages on the subject property and adjacent lands? 2. Are there any actual physical features present on the subject property and adjacent lands that support the identification on Appendix A/ Schedule B-4 of Key Natural Heritage and Key Hydrologic Features Wetlands on the subject property and adjacent lands? 3. Are there any actual physical features present on the subject property and adjacent lands that support the designation on Appendix K/ Map B.7.4-1 of Natural Open Space on the subject property and adjacent lands? 4. Are there any actual physical features present on the subject property and adjacent lands that support the designation on Appendix L/ Map B.7.4-2 of Core Areas, Linkages, Restoration Areas and Vegetation Protection Zones for the subject property and adjacent lands? 5. If the plan is amended to remove the identification of some or all of the Natural Heritage Features on the subject property or adjacent lands is it appropriate to designate those portions of the subject property and adjacent lands where the identification of Natural Heritage Features has been removed as Residential and if so, what is the appropriate Residential designation?
		#12 Nick and Anna De Felippis (667 Hwy. No. 8)	1. Do the Natural Heritage characteristics of the property support the designation of Natural Heritage Open Space on a portion of the subject property, and if not, what is the appropriate land use designation for this property? 2. Do the Natural Heritage characteristics of the property support the identification of Core Area on Appendix A/Schedule B on a portion of the subject property and on any portion of the adjacent properties? 3. If the Natural Heritage Features on the Property do not support the designation of Natural Open Space on a portion of the Property and the identification of Core Area and Vegetation Protection Zone on Appendix A/ Schedule B/ Maps B.7.4-1 and B.7.4-2 on a portion of the Property should OPA 17 contain site specific servicing policies permitting private services for the Property which would apply if the current dwelling on the property is removed and replaced with another single family dwelling
2	Community Park and Schools	#1 549367 Ontario Ltd. (SW quadrant of Barton Street and Jones Road)	1. Should the City's proposed Community Park be approved, having regard to: a) The size of the proposed park? And, b) The location of the proposed park? 2. Should the two respective school boards provide justification or need for the two proposed school sites with respect to the size, location and configuration of the two proposed school sites? 3. Should the proposed Community Park and both of the two proposed school sites be located in whole or in part on the lands owned by 549367 Ontario Limited? 4. Should Section 7.4.17.11 of the Secondary Plan provide detailed policy direction with respect to cost sharing for the proposed Community Park among the developers within the Secondary Plan area with respect to the following important matters: a) The mechanism(s) for determining how and when, in what form and on what terms, the affected property owner will be compensated for providing a Community Park serving the greater development area? b) The stage of the various development approvals within the Secondary Plan that will be considered prior to the proposed Community Park being secured and paid for by the City? c) The timing of acquisition of the proposed Community Park lands by the City for public purposes? d) The conditions of development approvals for other lands that benefit from the proposed Community Park designation on the lands owned by 549367 Ontario Limited?

			e) The ability of 549367 Ontario Limited to "trigger" the acquisition of the proposed Community Park by the City of Hamilton at fair market value, at a reasonable specified point in time, based on the appropriate underlying land use designation? 5. Should Section 7.4.18.3 of the Secondary Plan provide detailed policy direction with respect to cost sharing for the two proposed school sites among the developers within the Secondary Plan area with respect to the following important matters: a) How and when, and on what terms, the two proposed school sites would be acquired? b) What would happen if either or both of the two proposed school sites were to be declared surplus by one or both of the school boards? c) The mechanism for determining how, when, on what terms, and by whom the affected property owner will be compensated for the provision of two school sites serving the greater development area? d) The timing of acquisition of lands by the school board(s) for public purposes? e) The conditions of development approvals for other lands that benefit from the two school board designations on the lands owned by 549367 Ontario Limited? f) The ability of 549367 Ontario Limited to "trigger" the acquisition of the proposed school sites by either or both school boards at fair market value, at a reasonable specified point in time, based on the appropriate underlying land use designation? 6. Should Section 7.4.18.3 of the Secondary Plan provide detailed policy direction with respect to establishing mechanisms, targets, timing or triggers for determining the following important matters: a) The need for the large proposed Community Park on lands owned by 549367 Ontario Limited? b) Consideration of alternate locations for the proposed Community Park? c) Consideration of alternate land uses and development proposals for the lands proposed to be designated Community Park? d) All of the above, with the relevant changes, for the two school sites proposed to be located partly or entirely on lands owned by 549367 Ontario Limited? 7. Should UHOPA No. 17 provide for a different underlying land use designation for the lands owned by 549367 Ontario Limited, for medium density residential uses: (a) the lands can be developed as of right within a predicted time frame, instead of being wholly encumbered by a proposed Community Park and two proposed school sites and (b) collaterally, so that the owners of the said lands can be properly compensated by the City of Hamilton, one or both of the two school boards, and/or any developer(s) coming forward for development approvals? 8. Should City Council have the sole power, in its sole discretion, subsequently delegated to City officials, to decide if and when to acquire any of the lands owned by 549367 Ontario Limited for a Community Park, or for either or both of the school boards to acquire part(s) or all of the lands owned by 549367 Ontario Limited for school purposes, with no arbitration mechanism or other mechanism for 549367 Ontario Limited to "trigger", accelerate or resist any such acquisition, and no formula for compensation? Does such a scheme amount to expropriation without compensation, and does it have the effect of sterilizing the lands owned by 549367 Ontario Limited indefinitely? Is such a scheme even legal under present Ontario planning legislation and related case law?
3	Neighbourhood Parks	#2 Gino and Olindo DalBello (860 and 884 Barton Street)	1. Should the southerly portion of the DalBello lands, municipally known as 860 and 884 Barton Street be designated Neighbourhood Park? 2. Should the Neighbourhood Park designated on the DalBello lands, municipally known as 860 and 884 Barton Street, be moved elsewhere in UHOPA No. 17 (i.e. to the south and west of the Property)? 3. Should the size (extent of designation) of the Neighbourhood Park on the DalBello lands, municipally known as 860 and 884 Barton Street, be changed? 4. Has there been an appropriate justification for the approximately 2.6 hectare Neighbourhood Park proposed to be partially located on the subject lands? 5. Has the 800 metre Neighbourhood Park Service Radius policy been properly applied with respect to the location of this proposed park?

			6. Has the policy describing the preferred location/ access to Neighbourhood Parks been properly applied with respect to the proposed location of this Neighbourhood Park? 7. Is it appropriate that the City take into consideration the required amount of parkland to be provided in the form of Neighbourhood Parks only, without consideration of other public parks and open spaces in the Secondary Plan area, which may either already exist or are proposed? 8. Does the designation of the McNeilly Neighbourhood Park conform to all of the criteria in the Urban Hamilton Official Plan including, but not limited to, sections B.3.5, B.3.5.3, B.3.5.3.4, B.3.5.3.6, B.3.5.3.15, B.3.5.3.16, B.3.5.3.17 9. Are the Neighbourhood Park Designation criteria in Section 7.4.7.2 in OPA 17 appropriate? If so, does this proposed Neighbourhood Park conform to those criteria? 10. Should Appendix K to Amendment 17 (Map B.7.4-1) be modified to delete the Neighbourhood Park designation for this proposed Neighbourhood Park? 11. If the answer to issue 10 above is no, then should a policy be introduced to the Secondary Plan which states that should all or any part of this proposed Neighbourhood Park not be required for such purposes at the time a development application is made, the land may be developed for the same residential uses as the lands immediately adjacent to the former Neighbourhood Park designation lands without an amendment to the Secondary Plan, similar to the Area Specific Policy area C, shown on Map B.7.4-1 - Fruitland-Winona Secondary Plan - Land Use Plan? 12. Does the designation of the lands for the McNeilly Neighbourhood Park represent good planning? 13. Should Section 7.4.17.11 of the Secondary Plan provide detailed policy direction with respect to cost sharing for the proposed Neighbourhood Park among the developers/ land owners within the relevant Secondary Plan area respecting the mechanism(s) for determining how and when, in what form and on what terms, the affected property owner will be compensated for providing a Neighbourhood Park in excess of the Planning Act park contribution requirements?
		#4 Ray Bucci, 783878 Ontario Ltd., Bucci Homes (228, 244 McNeilly Road, 1069 Hwy. No. 8)	1. Has there been an appropriate justification for the approximately 2.7 hectare Neighbourhood Park proposed to be located immediately east of McNeilly Road, (the "McNeilly Neighbourhood Park")? 2. How has the 800 metre Neighbourhood Park Service Radius been applied with respect to the two (2) proposed Neighbourhood Parks east of McNeilly Road? 3. Is it appropriate that the City take into consideration the required amount of parkland to be provided in the form of Neighbourhood Parks only, without consideration of other public parks and open spaces in the Secondary Plan area, which may either already exist or are proposed? 4. Does the designation of the McNeilly Neighbourhood Park conform to all of the criteria in the Urban Hamilton Official Plan including, but not limited to, sections B.3.5, B.3.5.3, B.3.5.3.4, B.3.5.3.6, B.3.5.3.15, B.3.5.3.16, B.3.5.3.17 5. Are the Neighbourhood Park Designation criteria in Section 7.4.7.2 in OPA 17 appropriate? If so, does the proposed McNeilly Neighbourhood Park conform to those criteria? 6. Should Appendix K to Amendment 17 (Map B.7.4-1) be modified to delete the Neighbourhood Park designation for the lands east of McNeilly Road and west of proposed Collector road E and replaced with a Low Density Residential Designation? 7. If the answer to issue 6 above is no, then should a policy be introduced to the Secondary Plan which states that should all or any part of the McNeilly Neighbourhood Park not be required for such purposes at the time a development application is made, the land may be developed for Low Density Residential uses without an amendment to the Secondary Plan, similar to the Area Specific Policy area C, shown on Map B.7.4-1 - Fruitland-Winona Secondary Plan - Land Use Plan? 8. Does the designation of the lands for the McNeilly Neighbourhood Park represent good planning?
5	Density	#2 Gino and Olindo DalBello (860 and 884 Barton Street)	4. Should the existing (MDR3) designation nin UHOPA No. 17, as identified on lands municipally known as 860 and 884 Barton Street, be extended to the south on the DalBello property? If so, how far south should that designation be extended? Further, if as a result of that extension, there is an interface between (MDR#) and any Low Density Residential designations, are there any additional interface policies required to govern transition from the MDR2 designation to the Low Density Residential designations.

ATTACHMENT #2 (to Procedural Order)

Order of Evidence

Groups 3 and 5 – Phase 1(a) Commencing November 16, 2015

1. City of Hamilton
2. Gino and Olindo DalBello
3. Branthaven Winona Hills Inc., 131273 Ontario Inc., Branthaven Fruitland Inc.
4. Horizon Utilities Corp.
5. 2294643 Ontario Inc.
6. City of Hamilton Reply

Group 2 – Phase 1(b) Commencing March 7, 2016

1. City of Hamilton
2. 549367 Ontario Ltd.
3. Branthaven Winona Hills Inc., 131273 Ontario Inc., Branthaven Fruitland Inc.
4. Horizon Utilities Corp.
5. 2294643 Ontario Inc.
6. City of Hamilton Reply

Group 3 – Phase 1(c) Commencing June 13, 2016

1. City of Hamilton
2. 783878 Ontario Ltd.
3. Branthaven Winona Hills Inc., 131273 Ontario Inc., Branthaven Fruitland Inc.
4. Horizon Utilities Corp.
5. 2294643 Ontario Inc.
6. City of Hamilton Reply

ATTACHMENT #3 (to Procedural Order)

Purpose of the Procedural Order and Meaning of Terms

*The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.*

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order:

***Party** is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.*

***NOTE** that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.*

***Participant** is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.*

***Written and Visual Evidence: Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.*

***Witness Statements:** A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness'*

opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A ***participant statement*** *is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.*

Additional Information

Summons: *A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.*

The order of examination of witnesses: *is usually direct examination, cross-examination and re-examination in the following way:*
direct examination by the party presenting the witness;
direct examination by any party of similar interest, in the manner determined by the Board;
cross-examination by parties of opposite interest;
re-examination by the party presenting the witness; or
another order of examination mutually agreed among the parties or directed by the Board.