

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 06, 2016

CASE NO(S): PL150694

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Arber Developments Ltd. and Hert Inc.
Subject:	Request to amend the Official Plan - Refusal of request by the City of Welland
Existing Designation:	Core Natural Heritage System, Low Density Residential and Medium Density Residential
Proposed Designated:	Low Density Residential and Medium Density Residential
Purpose:	To permit the development of a subdivision consisting of single detached and multiple residential units
Property Address/Description:	633 South Pelham Road
Municipality:	City of Welland
Approval Authority File No.:	15-73
OMB Case No.:	PL150694
OMB File No.:	PL150694
OMB Case Name:	Arber Developments Ltd. v. Welland (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Arber Developments Ltd. and Hert Inc.
Subject:	Application to amend Zoning By-law No. 2667 - Refusal of Application by the City of Welland
Existing Zoning:	Rural Agricultural Zone (RA), Highway Commercial Zone (C4) and Single-Detached Dwelling - Second Density Zone (R2)
Proposed Zoning:	Site Specific Single-Detached Dwelling - Third Density Zone (R3) and Multiple Dwelling - Third Density Zone (RM3)
Purpose:	To permit the development of a subdivision

Property Address/Description:	consisting of single detached and multiple residential units
Municipality:	633 South Pelham Road
Municipality File No.:	City of Welland
OMB Case No.:	15-73
OMB File No.:	PL150694
	PL150697

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Arber Developments Ltd. and Hert Inc.
Subject:	Proposed Plan of Subdivision
Property Address/Description:	633 South Pelham Road
Municipality:	City of Welland
Municipal File No.:	15-73
OMB Case No.:	PL150694
OMB File No.:	PL150698

Heard: November 27, 2015 Welland, Ontario

APPEARANCES:

Parties

Arber Developments Ltd. and Hert Inc.

City of Welland

Regional Municipality of Niagara

Don Labute

Counsel

Katarina Sliwa and Kate Fairbrother

Thomas Hanrahan

Stephen Chisholm

Self-represented

DECISION DELIVERED BY J. de P. SEABORN AND PROCEDURAL ORDER OF THE BOARD

[1] The appeals before the Board were scheduled for a pre-hearing conference, notice of which was properly given (Exhibit 1, Affidavit of Service). The appeals relate to a proposal for low and medium density residential development for a property located at 633 South Pelham Road, in the City of Welland ("City").

[2] At the outset of the hearing the parties were established, as follows: Arber Developments Limited and Hert Inc. ("Applicants"); City of Welland ("City"); the Regional Municipality of Niagara ("Region"); and Don Labute, representing himself. Participants included Diane Sauder and John Marchio.

[3] Ms. Sliwa provided a draft Procedural Order (Exhibit 2) setting out the proposed requirements to govern the conduct and organization of the hearing. Subsequent to the hearing, the draft Procedural Order was revised and filed with the Board to reflect the hearing date requested by the parties. Similarly, the Procedural Order now includes the issues for the hearing, albeit the Applicants do not accept Issue 2, as proposed by the Region, and will seek a time to make submissions to the Board, on notice, and via a telephone conference call ("TCC"). In this regard, the Case Coordinator should be contacted to find a convenient date to convene the TCC.

[4] At the request of the parties and with their consent, the hearing will commence at **11 a.m. on Monday, April 25, 2016 for a period of five days** at:

**Welland Civic Square
Council Chambers
60 East Main Street
Welland, Ontario**

There shall be no further notice.

[5] The Procedural Order that will govern the hearing is set out as Attachment 1 to this decision. It contains the exchange dates for all witness statements, confirmation of the parties and participants, and the issues list. There will be no changes made to the

Procedural Order, subject to the matter raised by the Applicants with respect to a particular issue. If the matter cannot be resolved, a hearing by way of TCC will be held.

"J. de P. Seaborn"

J. de P. SEABORN
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.

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

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

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O.M.B. Case No.:	PL150694
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O.M.B. File No.:	PL150698

PROCEDURAL ORDER

The Board orders that:

The Board may vary or add to this Order 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

1. The Hearing will begin on **April 25, 2016 at 11:00 a.m.** at the **Welland Civic Square, Council Chambers, 60 East Main Street, Welland, Ontario.**
2. The length of the Hearing will be approximately **5** days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
3. The Parties and Participants (see **Attachment 1** for the meaning of these terms) identified at the prehearing conference are listed in **Attachment 2.**
4. The order of evidence at the Hearing is listed in **Attachment 3.** The Board may limit the amount of time allocated for opening statements, evidence in chief (including qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.
5. The issues for the Hearing will be determined after the prehearing conference. The Parties will provide to the Board an Issues List on or before **Friday, December 11, 2015** which will be appended to this procedural Order as **Attachment 4.** 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.

Requirements Before the Hearing

6. All Parties and Participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other Parties and the Board of the representative's name, mailing address, email address and phone number as soon as possible.
7. A Party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the City Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **Friday, January 22, 2016.** 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. Expert witnesses in the same field shall have a meeting on or before **Friday, March 4, 2016** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the Parties and the City Clerk.
9. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in **Section 11**. 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. Expert witnesses who are under summons but not paid to produce a report do not have to file a witness statement; but the party calling them must file a brief outline of the witness' evidence, as in **Section 11**.
11. On or before **Friday, February 26, 2016**, the Parties shall provide copies of their witness and expert witness statements to the other Parties and to the City Clerk. The Parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
12. A Participant must provide to the Board and the parties a Participant statement by **Friday, February 26, 2016**, or the Participant may not give oral evidence at the hearing.
13. On or before **Tuesday, April 5, 2016**, Parties may provide to all other Parties and file with the City Clerk a written response to any written evidence of another Party.
14. On or before **Monday, April 11, 2016**, the Parties shall provide copies of their visual evidence to all of the other Parties. If a model is proposed to be used, the Board must be notified before the hearing. All Parties must have a reasonable opportunity to view it before the hearing.
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.
*(see Rules 34 to 38, inclusive, of the Board's Rules, which require that the moving Party provide copies of the motion to all other Parties **ten (10) days** before the Board hears the motion.)*
16. A Party who provides the written evidence of a witness to the other Parties must have the witness attend the hearing to give oral evidence, unless the

party notifies the Board by **Monday, April 11, 2016** that the written evidence is not part of their record.

17. Documents may be delivered by personal delivery, email, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by facsimile shall be governed by the Board's *Rules* 26 to 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.

This Member is [not] seized.

So orders the Board.

ATTACHMENT 1

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties discuss this draft 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 Toll Free 1-866-887-8820, 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 authorization 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 these statements.

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 may ask the Board Member 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.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may 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 the material and do not attend.

ATTACHMENT 2

List of Parties and Participants

Parties:

1. Arber Developments Ltd. and Hert Inc.

Mr. Michael Melling
Davies Howe Partners LLP
The Fifth Floor
99 Spadina Avenue
Toronto, Ontario
M5V 3P8

e-mail: *michaelm@davieshowe.com*
t: 416-977-7088
f: 416-977-8931

Ms. Katarzyna Sliwa
Davies Howe Partners LLP
The Fifth Floor
99 Spadina Avenue
Toronto, Ontario
M5V 3P8

e-mail: *katarzynas@davieshowe.com*
t: 416-977-7088
f: 416-977-8931

2. City of Welland

Mr. Thomas G. Hanrahan
Lancaster, Brooks & Welch LLP
247 East Main Street, P.O. Box 67
Welland, Ontario
L3B 5N9

e-mail: *thanrahan@lbwlawyers.com*
t: 905-735-5684
f: 905-735-3340

3. Regional Municipality of Niagara

Mr. Stephen Chisholm
1815 Sir Isaac Brock Way, P.O. Box 1042
Thorold, Ontario
L2V 4T7

e-mail: *stephen.chisholm@niagararegion.ca*
t: 905-980-6000
f: 905-685-7931

4. Mr. Don Labute

75 Sumbler Road
Welland, Ontario
L3C 3P1

e-mail: *dlabute@cogeco.ca*
t: 905-735-4225

Participants:

1. **Ms. Diane Sauder**

750 Thorold Road
Welland, Ontario
L3C 3W8

2. **Mr. John Marchio**

51 Sumbler Road
Welland, Ontario
L3C 3P1

ATTACHMENT 3

Order of Evidence

1. Arber Developments Ltd. and Hert Inc.
2. The City of Welland
3. Regional Municipality of Niagara
4. Mr. Don Labute
5. Participants – Ms. Diane Sauder and Mr. John Marchio
6. Reply by Arber Developments Ltd. and Hert Inc.

ATTACHMENT 4

Issues List

NOTE: The identification of any issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing.

Regional Municipality of Niagara

1. Do the subject lands contain a Provincially Significant Wetland ("PSW"), as designated by the Ministry of Natural Resources? If so, would the proposed development require a declassification of the PSW?
2. Having regard to Policy 7.B.1.7 of the Regional Official Plan for the Niagara Region, is a Regional Official Plan Amendment required to permit the proposed development and, if so, has the proponent satisfied the requirements of that section?*
3. Does the proposed development conform to the requirements of Policy 7.B.1.10 of the Regional Official Plan for the Niagara Region?

City of Welland

4. Do the subject lands contain a PSW and if so, what are its boundaries?
5. If the subject lands do contain a PSW, would the proposed development, as it is presently before the Board, require a declassification of the PSW?
6. Is the proposed development, as it is presently before the Board, consistent with the planning objectives as set out in Section 3.2 (growth management, planning objectives) of the City of Welland Official Plan, in particular planning objective 3.2(v)?
7. Would a decision to approve the proposed development, as it is presently before the Board, be consistent with Section 2.1.4 (Natural Heritage) of the 2014 Provincial Policy Statement ("PPS")?

*the Appellant does not agree that this issue is appropriate and will request a Board teleconference to make submissions with respect to it