

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 28, 2017

CASE NO(S): PL150805

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

Appellant: Coalition For Rural Ontario Environmental Protection
Appellant: Pharm Meds Limited
Subject: Proposed Official Plan Amendment No. 9
Municipality: City of Hamilton
OMB Case No.: PL150805
OMB File No.: PL150805
OMB Case Name: Coalition For Rural Ontario Environmental Protection v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Artstone Holdings Limited
Appellant: Coalition For Rural Ontario Environmental Protection
Appellant: Oliver Klass and Jessica Myers
Appellant: Fern Brook Resort Inc.; and others
Subject: By-law No. 15-173
Municipality: City of Hamilton
OMB Case No.: PL150805
OMB File No.: PL150806

Heard: February 16, 2017 by telephone conference call

APPEARANCES:

Parties

Counsel

Pharm Meds Limited

A. Toumanians

City of Hamilton

J. Wice

MEMORANDUM OF ORAL DECISION DELIVERED BY S. JACOBS ON FEBRUARY 16, 2017 AND ORDER OF THE BOARD

[1] Pharm Meds Limited (“Pharm Meds”) appealed to the Ontario Municipal Board (the “Board”) the City of Hamilton (the “City”) Rural Hamilton Official Plan Amendment No. 9 (“RHOPA 9”) and Zoning By-law Amendment No. 15-173 (the “ZBA”). Pharm Meds’ appeals concerned the size restrictions and minimum side setbacks that would apply to medical marihuana facilities through RHOPA 9 and the ZBA.

[2] Counsel for Pharm Meds and the City advised the Board that these two parties have reached a settlement, resulting in proposed site-specific amendments to RHOPA 9 and the ZBA, which are found in Attachment 1.

[3] Counsel for Pharm Meds filed the affidavit of Brian J. Smith, dated February 3, 2017, in support of the settlement. The Board qualified Mr. Smith to provide opinion evidence in the area of land use planning. It is Mr. Smith’s opinion that the proposed amendments to RHOPA 9 and the ZBA are consistent with the Provincial Policy Statement, 2014 and conform to the Greenbelt Plan. In his opinion, the proposed modifications also conform to the City’s Rural Official Plan, have regard to the applicable criteria in the *Planning Act*, and represent good planning.

[4] The Board concurs with Mr. Smith’s opinion and will approve the modifications to RHOPA 9 and the ZBA in accordance with Attachment 1. Ms. Wice explained to the Board that, in light of ongoing appeals of RHOPA 9 and the ZBA, the City would like to modify its annotated versions of the instruments to reflect the disposition of the Pharm Meds appeals, and so the Board will direct this.

ORDER

[5] The Board orders that the appeals by Pharm Meds Limited are allowed in part. The City of Hamilton Rural Hamilton Official Plan Amendment No. 9 and Zoning By-law No. 15-173 are modified in accordance with Attachment 1.

[6] The City is directed and authorized to remove references to Pharm Meds Limited from the annotated versions of the instruments as contained in Exhibit C and Exhibit D to the affidavit of Joanne Hickey-Evans dated March 30, 2016.

“S. Jacobs”

S. JACOBS
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

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

Attachment "A"

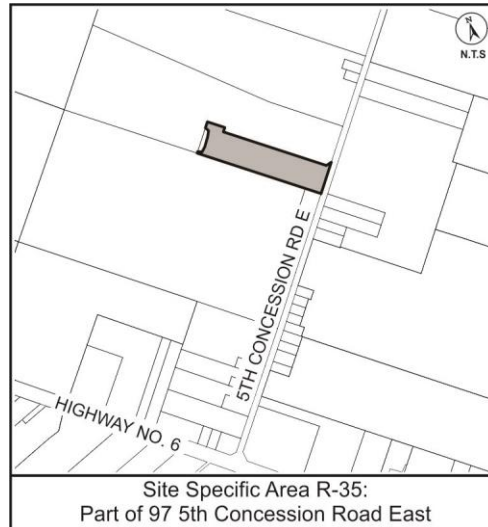
Modifications to RHOPA 9

Text Changes

1. That Volume 3, Chapter B – Rural Site Specific Areas be amended by adding a new site specific policy as follows:

"R-35 Lands known as part of 97 5th Concession Road East (OPA 9)

- 1.0 Notwithstanding Section D.2.1.1.4 a) and b), a maximum gross floor area of 10,000.0 square metres may be permitted for all buildings associated with a Medical Marihuana Growing and Harvesting Facility, in accordance with the Zoning By-law."



Map Changes

2. That Volume 3: Appendix A – Site Specific Key Map, be amended by identifying the subject lands as R-35, as shown on Appendix "A".

Modifications to ZBLA 15-173

1. That Map 61 of Schedule "A" – Zoning Maps, of By-law No. 05-200, be amended by applying Special Exception 459 to the Rural (A2) Zoned portion of the lands municipally known as 97 5th Concession Road East, as shown on Appendix "B"; and,
2. That Schedule C: Special Exceptions of By-law No. 05-200 be amended by adding thereto the following special exception:
 - "459. Notwithstanding Sections 12.2.3.1 m), i) and ii) and 12.2.3.1 c), on those lands zoned Rural (A2) Zone, identified on Map 61 of Schedule "A" – Zoning Maps and described as part of 97 5th Concession Road East, the following special provisions shall also apply:

- a) A maximum gross floor area of 10,000 square meters shall be permitted for all buildings and structures associated with a Medical Marihuana Growing and Harvesting Facility; and,
- b) All buildings associated with a Medical Marihuana Growing and Harvesting Facility shall have a minimum side yard setback of 13.0 metres.”

Appendix "A"

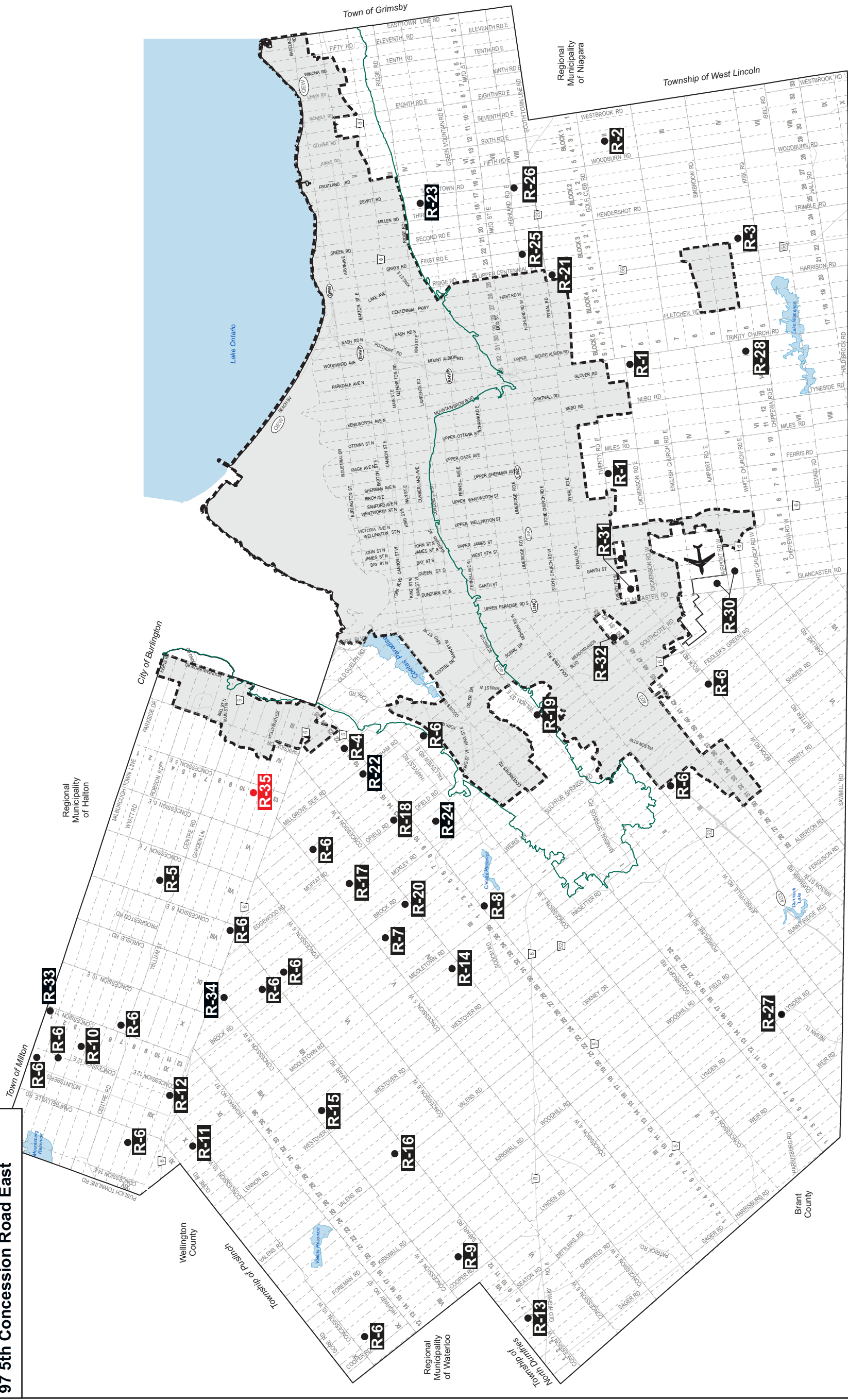
Ontario Municipal Board Settlement

Case No. PL150805

97 5th Concession Road East

Agreed Changes

Lands to be identified as Site Specific Area R-35



Legend

- Site Specific Areas (SSA)
- R-** Refers to Rural Site Specific Area #, Volume 3, Chapter B

Other Features

- Urban Area
- John C. Munro Hamilton International Airport
- Niagara Escarpment
- Urban Boundary
- Municipal Boundary

Council Adoption: September 27, 2006
Ministerial Approval: December 24, 2008
Effective Date: March 7, 2012

Rural Hamilton Official Plan
Volume 3: Appendix A
Site Specific Key Map

Haldimand County

Not To Scale
Date: May 3, 2016
PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
Hamilton
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Appendix "B"

Address:
97 5th Concession Rd. E.
(Flamborough)
OMB Case No.: PL150805
File No.: ZBLA-15-173

Legend



Change in Zoning from
Rural (A2) Zone to Rural
(A2, 459) Zone, Modified

Zoning Map 61

Date:
Feb. 9, 2017



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
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