

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 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

PROCEEDING COMMENCED UNDER subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Motion by: City of Hamilton
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Greg Gowing
Subject: By-law No. 15-173
Municipality: City of Hamilton
OMB Case No.: PL150805
OMB File No.: PL150806

Heard: July 26, 2016 in Dundas, Ontario and September 14, 2016 by telephone conference call

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
City of Hamilton	J. Wice*
Multi-area Developments Inc.	M. Laskin*
20 Road (Glanbrook) Developments Limited	A. Toumanians*
Artsone Holdings Limited	
Weizer Investments Limited	
Corpveil Holdings Limited	
Pharm Meds Limited	
Silverwood Homes Limited.	J. Meader*
Greg Gowing	Self-represented
Oliver Klaas and Jessica Myers	Self-represented

MEMORANDUM OF ORAL DECISION DELIVERED BY K. J. HUSSEY ON JULY 26, 2016 AND ON SEPTEMBER 14, 2016 AND ORDER OF THE BOARD

[1] The second Pre-hearing Conference (“PHC”) regarding the appeals to Rural Hamilton Official Plan Amendment No. 9 (“RHOPA”) of the City of Hamilton (the “City”), and Zoning By-law No. 15-173, was held on July 26, 2016 for a status update and to set dates for: (1) a third PHC, (2) to hear a motion to dismiss brought by the City and (3) for the hearing of appeals by Oliver Klaas and Jessica Myers.

[2] The City informed the Board that the parties continue to work on narrowing the issues. The City also requested the related appeals by Multi-area Developments Inc., Twenty Road (Glanbrook) Developments Limited, Weizer Investments Limited and Corpveil Holdings Limited, to be heard together. The Board granted the request.

[3] The following dates were fixed on the Boards Calendar:

- **September 14, 2016** to hear the Motion by way of a telephone conference call (“TCC”) to dismiss the appeal of Greg Gowing.
- **October 20, 2016** for a PHC by TCC
- **January 12-13, 2017** for a two day appearance hearing

Motion to Dismiss

[4] The Board allowed the City’s Motion to dismiss the appeal of Greg Gowing against Zoning By-law No.15-173, on the grounds that Mr. Gowing’s appeal does not disclose any apparent land use planning ground on which the Board could allow all or part of the appeal. The reasons follow.

[5] The Board received the City’s Motion materials, including the affidavit of a qualified Land Use Planner Diana Yakhni, in support of the City’s position. Ms. Yakhni had been a Planner with the City for seven years and was part of the team which prepared Rural Zoning By-law No.15-173.

[6] On July 10, 2015, the City passed By-law No. 15-173 and Mr. Gowing filed an appeal on August 10, 2015, specifically appealing the approval of storage containers to be used as permanent accessory structures. Mr. Gowing stated on the appeal form submitted to the City, that under the previous and current zoning by-laws storage containers are permitted as accessory structures, but it was his opinion that storage containers are industrial equipment and as such they should be banned from the S1 zone as accessory structures.

[7] Ms. Yakhni’s affidavit evidence stated her opinion that the reason set out on the appeal form submitted by Mr. Gowing, is not sufficient to constitute a land use planning ground on which the Board could allow all or part of the appeal because there is no

indication of what potential negative or adverse impact could be associated with storage containers used as accessory structures. In addition, as acknowledged by Mr. Gowing, storage containers were permitted as accessory structures under the previous zoning by-law, in particular the Settlement Residential Zone-R2, under the former Township of Flamborough Zoning By-law No. 90-145-Z, and now under Rural Zoning By-law No. 15-173, also within the Settlement Residential (S1) Zone. Ms. Yakhni opined that there has been no substantive change to regulations pertaining to structures accessory to single detached dwellings as a result of Rural Zoning Bylaw No.15-173.

[8] The City further submitted that Mr. Gowing failed to follow the Board's direction to provide an Issues List to the City and he has had no communication with the City regarding his appeal.

[9] Mr. Gowing filed no response to the Motion in accordance with Rules 39 and 40 of the Board's *Rules of Practice and Procedure* (the "Rules") set out below, even though he was cautioned at the second PHC of the requirement to do so.

39. The Notice of Response to Motion

A responding party shall serve a notice of response that:

- a) states the response to be made, including a reference to any statutory provision or rule to be relied on;
- b) lists the documentary evidence to be used at the hearing of the motion; and
- c) include an affidavit setting out a brief and clear statement of the facts upon which the responding party will rely.

40. Service of the Notice of Response to Motion

The notice of response to motion and all supporting material as set out in Rule 39 shall be served no later than 2 days before the date of the motion to be held in person or by electronic hearing unless the Board orders otherwise. The notice of response shall be served on all parties, on any other person as directed by the Board, and on the Board Secretary. An affidavit of service shall be filed with the Board prior to or at the hearing of the motion.

[10] Mr. Gowing participated in the hearing of the Motion that was held by way of a telephone conference call. The Board confirmed with Mr. Gowing that the Rules were not followed and that there was no response to the Motion. Notwithstanding, the Board

invited submissions from Mr. Gowing who, even then, made no attempt to respond to the Motion. There was no evidence or submissions offered by Mr. Gowing to contradict the affidavit evidence of Ms. Yakhni and the City's submissions.

[11] On the basis of the evidence before the Board and the submission of Counsel for the City of Hamilton, the Board found that the appeal raises no apparent land use planning grounds and therefore allowed the Motion and dismissed the appeal.

[12] So Orders the Board.

"K. J. Hussey"

K. J. HUSSEY
VICE-CHAIR

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Ontario Municipal Board

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