

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 3, 2016

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
Appellant:	St. Mary's Cement Inc. (Canada)
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:	3727 Highway Six Inc.
Appellant:	Artstone Holdings Limited
Appellant:	Jawad Chaudhry
Appellant:	Coalition For Rural Ontario Environmental Protection; and others
Subject:	By-law No. 15-173
Municipality:	City of Hamilton
OMB Case No.:	PL150805
OMB File No.:	PL150806

Heard: April 7, 2016 in Hamilton, Ontario

APPEARANCES:

Parties

City of Hamilton

Counsel

J. Wice

Coalition for Rural Ontario Environmental Protection (CROP)	M. Connell
Multi-area Developments Inc.	J. Hoffman
20 Road (Glanbrook) Developments Limited Artstone Holdings Limited Weizer Investments Limited Corpveil Holdings Limited Pharm Meds Limited	A. Toumanians
Silverwood Homes Limited. Fern Brook Resorts Inc.	D. Baker
Oliver Klass and Jessica Myers	Self-represented
3727 Highway Six Inc.	R. Wellenreiter

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON
APRIL 7, 2016 AND ORDER OF THE BOARD**

INTRODUCTION

[1] This is the first of a two-part decision.

[2] The decision stems from the first pre-hearing conference ("PHC") concerning Rural Hamilton Official Plan Amendment No. 9 ("RHOPA") of the City of Hamilton ("the City"), and the corresponding Zoning By-law No. 15-173 ("ZB").

[3] Both dealt specifically with the Rural area of the City, and the ZB was intended to harmonize various provisions across the City's former municipalities.

[4] Both the OPA and ZB were appealed, by various interests, to the Ontario Municipal Board ("the Board"). In some instances, settlements were negotiated, and/or Appellants withdrew. In others, the parties agreed on a roadmap for further

proceedings. Finally, in one instance, namely the appeal by 3727 Highway Six Inc., the City challenged the status of that Appellant to bring its appeal under the *Planning Act* ("the Act").

[5] This last matter, concerning the standing of this would-be Appellant, was addressed in the afternoon session of this PHC, and that outcome will be the subject of a separate decision of this Board. All other matters were addressed in the morning session of the PHC, whose outcome is outlined below.

PARTIES AND PARTICIPANTS

[6] Aside from the existing Appellants of record, no one else came forward seeking party or participant status.

[7] The Board has noted the withdrawal of two Appellants, St. Mary's Cement Inc. (Canada) and Jawad Chawdry.

ONGOING INFORMATION

[8] The City noted that it has created a website for materials related to these proceedings, at: <https://www.hamilton.ca/city-planning/official-plan-zoning-by-law/rural-zoning>

[9] The City said that, among other things, it intended to maintain an Exhibit List and Appellant Index on that website.

APPROVAL OF UNCONTESTED PROVISIONS

[10] The City said it had notified all the Appellants that it would be seeking approval of the uncontested portions of the OPA and ZB. It said that, in response, none had expressed an objection.

[11] The Board agrees with the City's request, and will return to that topic at the end of this decision.

[12] The City also used the opportunity to correct a numbering mistake on a municipal address.

RE-CATEGORIZATION OF APPEAL

[13] There were two unrepresented parties, Oliver Klass and Jessica Myers, who had filed an appeal of the OPA, and not of the ZB. The City said that, on review of the substance of their concern, it appeared that their appeal should actually have been directed the other way round, i.e. against the ZB and not the OPA. Mr. Klass and Ms. Myers did not dispute that characterisation.

[14] The City, Mr. Klass and Ms. Myers agreed that their appeal should proceed as an appeal of the ZB instead. There was no dispute.

[15] The Board is prepared to re-categorize their appeal accordingly.

THE FERN BROOK EXCEPTION

[16] One appellant, Fern Brook Resorts Inc. ("Fern Brook") owns property which, under the provisions of the applicable pre-existing Zoning By-law, was subject to a Holding ("H") provision.

[17] Fern Brook told the City that the new ZB would produce a substantive change in that zoning. On further discussion, Fern Brooke and the City agreed that they would maintain the pre-existing zoning status of the property.

[18] The City's planner, Joanne Hickey-Evans, provided sworn evidence that, from the standpoint of good planning, there was nothing wrong with the previous zoning status of the property – or with continuing it.

[19] The Board finds no dispute.

THE CROP APPEAL

[20] The Board was told that the appeal by the Coalition for Rural Ontario Environmental Protection (“CROP”) tended to cover topics different from the other appeals in this file, but akin to topics covered in another Board File, No. PL151130. The latter file pertained to appeals of three by-laws that had been adopted more recently. Those three by-laws triggered appeals not only by CROP, but by other appellants.

[21] The City said that it might be more appropriate to "sever" CROP's current appeal from the current file, and to treat it as being together with the matters in PL151130. CROP did not dispute the idea.

[22] The Board is mindful that there is a PHC scheduled for PL151130, on July 13, 2016. The Board is also mindful that there are other parties to PL151130, who may have opinions on the matter. The Board therefore expresses no opinion as to whether the CROP appeal in the current file should be simply consolidated administratively with its appeal in PL151130, whether it should be fully consolidated with that file, whether those matters should be heard together, or otherwise. When the prospects there become clearer, notably subsequent to the July 13 PHC in that file, the Board is prepared to consider the matter further, including the possibility of "severing" the CROP appeal from the rest of the current proceedings, according to what may be most expeditious.

NEXT STEPS

[23] In the current file, there was consensus on the utility of another PHC in July 2016. The parties agreed on timelines to advise each other of their issues, and any procedural suggestions: Appellants would advise the City of same, about six weeks ahead of the PHC, and the City would respond, about two weeks ahead of the PHC.

[24] The Board reminded the parties of the availability of its mediation services.

[25] The Board also takes this opportunity to remind the parties that it may be in their interest to start thinking ahead to the possibility of eventual expert witness statements, expert meetings, agreed statements of fact, and whether any experts might testify as a panel.

[26] The Board disposes of the above matters as follows. The Board orders:

1. Those parts of Rural Hamilton Official Plan Amendment No. 9 that are not under appeal, as set out in Exhibit "C" to the affidavit of Ms. Hickey-Evans, dated March 30, 2016 (the "annotated RHOPA", at Exhibit 1 of these proceedings), came into effect on the day after the last day for filing a notice of appeal, being August 10, 2015, in accordance with the provisions of s. 17(27) of the Act.
2. Paragraph 1 above is subject to the following:
 - (a) That the coming into effect of portions of the RHOPA shall be strictly without prejudice to and shall not have the effect of:
 - (i) limiting the resolution of an appellant's appeal;

- (ii) affecting a party's right to seek to modify, delete or add to the unapproved policies, schedules and associated text or to seek to add a new policy to the RHOPA; or
 - (iii) limiting the jurisdiction of the Board to consider and approve modifications, deletions or additions to the unapproved policies, schedules and associated text or to add a new policy on a general or site-specific basis, as the case may be.
- (b) The coming into effect of portions of the RHOPA is without prejudice to the positions taken by the parties to any site-specific appeals so that if those appeals proceed on a site-specific basis to a hearing, either on their own or as may be consolidated with other appeals, the City will not take the position that the Board ought not to approve site-specific modifications to the affected policies, schedules and associated text on the basis that they deviate from or are inconsistent with such policies, schedules and associated text on a City-wide basis (or as approved in respect of other lands which are subject to the same policies, schedules and associated text). However, this does not affect the City's right to assert that the approved policies, schedules and associated text should be applied to the specific sites without modification on the basis that they constitute good planning.
3. Those parts of Zoning By-law 15-173 (the "By-law") that are not in issue, as set out in Exhibit "D" to the affidavit of Ms. Hickey-Evans dated March 30, 2016 (the "annotated By-law"), are deemed to have come into force on the day the By-law was passed, being July 10, 2015, in accordance with s. 34(31) of the Act.
 4. Paragraph 3 above is subject to the following:

- (a) The appeal by Fern Brook Resorts Inc. is allowed to the extent necessary to implement the changes as set out in Exhibit “E” to the affidavit of Ms. Hickey-Evens dated March 30, 2016, and the City is directed and authorized to remove the reference to Fern Brook Resort Inc. from the annotated version of the By-law as contained in Exhibit “D”.
- (b) Correction of the municipal address error in Special Exception 118 shall be made in accordance with Exhibit “B” in the affidavit of Ms. Hickey-Evens dated March 30, 2016;
- (c) The coming into effect of certain portions of the By-law shall be strictly without prejudice to, and shall not have the effect of:
- (i) limiting the resolution of an appellant’s appeal;
 - (ii) affecting a party’s right, to seek to modify, delete or add to the unapproved sections, tables, definitions, maps, schedules, and associated text; or
 - (iii) limiting the jurisdiction of the Board to consider and approve modifications, deletions or additions to the unapproved sections, tables, definitions, maps, schedules and associated text, on a general or site-specific basis, as the case may be.
- (d) The coming into effect of certain portions of the By-law is without prejudice to the positions taken by the parties to any site-specific appeal, so that if those appeals proceed to a hearing, either on their own or as may be consolidated with other appeals, the City will not take the position that the Board ought not to approve site-specific modifications to the affected sections, tables, definitions, maps, schedules, and associated text, on the basis that they deviate from or are inconsistent with such sections, tables, definitions, maps, schedules, and associated text on a City-wide basis (or as approved in

respect of other lands which are subject to the same sections, tables, definitions, maps, schedules, and associated text). However, this does not affect the City's right to assert that the approved sections, tables, definitions, maps, schedules, and associated text should be applied to the specific sites without modification on the basis that they constitute good planning.

5. The Board notes that, notwithstanding anything ordered above, the City has not conceded that any portions of the RHOPA or the By-law that have not come into effect or that are not deemed in effect are properly under appeal and the City has reserved the right to bring motions or take any other action to have the breadth and scope of any appeal determined by the Board at a future date.
6. Notwithstanding anything ordered above, the Board hereby retains jurisdiction to consider and approve modifications to any policies, schedules and associated text approved herein as may be appropriate to dispose of any of the outstanding appeals before the Board, in accordance with s. 87 of the *Ontario Municipal Board Act*.
7. Any future settlements may be brought forward for approval by the Board by way of telephone conference call upon prior notice and circulation of the information to the parties.
8. On the consent of the City, the Board is prepared to treat the appeal by Mr. Klass and Ms. Myers as an appeal of Zoning By-law 15-173, as opposed to an appeal of the RHOPA, in the sense that Mr. Klass and Ms. Myers will be treated as parties to the appeal of Zoning By-law 15-173, and will be considered to have withdrawn their appeal of the RHOPA.
9. The Board fixes **Tuesday, July 26, 2016, at 10 a.m.** for the start of the next pre-hearing conference, at:

**Dundas Town Hall
Second Floor Auditorium
60 Main Street, Dundas
Hamilton, Ontario L9H 1C6**

10. In anticipation of a forthcoming Procedural Order, each Appellant shall provide to the City a draft of their own proposed issues, for eventual insertion into a consolidated Issues List. Their draft of issues shall be provided to the City no later than **June 14, 2016**. The City shall respond no later than **July 14, 2016**.
11. No further notice will be given for the matters currently before the Board.
12. This Member is not seized.

“M.C. Denhez”

M.C. DENHEZ
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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