

The Board has ordered that the appeal against Zoning By-law 05-200 of the City of Hamilton be amended in the manner set out in Attachment "2" to this order, in all other respects, the Board Orders that the appeal is dismissed.

Re: lands located at 111 Parkside Dr. Flamborough, Part of Lot 11, and Concession 4

OMB File No.: PL070395; PL080150; PL080167

Issue Date: December 11, 2008

By-law No.	OMB File No.	
11-213	PL070395	To Amend By-law No 05-200 respecting lands located at 111 Parkside Drove, Concession 4 Part of Lot 11 (East Flamborough), in the former Town of Flamborough, now in the City of Hamilton -Attachment 2

ISSUE DATE:

Dec. 11, 2008

By-law No. 11-213



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

PL070395

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Silverwood Homes Limited
Subject: Proposed Official Plan Amendment No. 109
Municipality: City of Hamilton
OMB Case No.: PL070395-O070054
OMB File No.: PL080150

IN THE MATTER OF subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Silverwood Homes Limited
Subject: Proposed Plan of Subdivision No. 25T-200621
Municipality: City of Hamilton
Property Address/Description: Part of Lot 11, Concession 4
OMB Case No.: PL070395-O070054
OMB File No.: PL080150

Silverwood Homes Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 05-200 of the City of Hamilton and Zoning By-law 90-145-Z of the former Town of Flamborough to rezone lands respecting Part of Lot 11, Concession 4 to rezone the land from Agricultural to Residential to permit the development of a subdivision.

OMB Case No.: PL070395-O070054
OMB File No.: PL080167

APPEARANCES:

Parties

City of Hamilton
Silverwood Homes Limited
MC2 Homes
Sun-Canadian Pipe-Line
City of Burlington
Landmart Realty Corp.
Amedeo DiMarco

Counsel*

A. Zuidema*
M. McQuaid* and P. Chronis
E. Pefhany*
R. Coburn*
R.G. Doumani*
R. Cheeseman*
A. Platt*

DECISION DELIVERED BY J. P. ATCHESON AND ORDER OF THE BOARD

This was a hearing of the Board in the matter of consolidated appeals by Silverwood Homes Limited (The Appellant) to a portion of Official Plan Amendment No.109 to the Official Plan of the Town of Flamborough now in the City of Hamilton. The Appellant has also appealed the City of Hamilton's failure to make a decision with respect to a proposed Draft Plan of Subdivision (File 25T -200621) composed of lands in Part Lot 11 Concession 4 (former Township of East Flamborough now in the City of Hamilton) and the City's failure or neglect to enact Zoning By-law Amendments to Zoning By-law 05-200 of the City of Hamilton and Zoning By-law 90-145-Z of the former Town of Flamborough to rezone the draft plan of subdivision lands from Agricultural to Residential to permit the development contemplated by the Draft Plan of Subdivision. Amedeo DiMarco has joined the appeal with respect to Official Plan Amendment No. 109 as it affects his lands which are shown on Exhibit 19.

The Board was advised by Counsel present at the commencement of the hearing that some of the parties had reached a conditional settlement with respect to their issues on the basis that if the Board were to find in favour of the Appellant that certain conditions be imposed in the Conditions of Draft Approval. The settlements are described as follows:

1. Sun-Canadian Pipe-Line through its Counsel confirmed that it was prepared to settle its issues on the basis that conditions in the form found at Exhibit 11, conditions 36 to 39, were imposed as part of any draft plan approval.

2. MC2 Homes through its Counsel confirmed that it was prepared to settle its issues on the basis that a condition in the form found at Exhibit 11, condition 44, was imposed as part of any draft plan approval.

3. The City of Burlington through its Counsel confirmed that the issue of housing need was no longer an issue and that further his client was prepared to settle its transportation issues on the basis that a condition in the form contained in the Parkside Hill Draft Plan settlement was imposed as part of any draft plan approval for the Silverwood development. Exhibit 92, Condition 20.

Counsel for the City, the Appellant, and the remaining parties were in agreement with the conditional settlements proposed. The Board with the consent of the parties and on the basis just described excused Sun-Canadian Pipe-Line, MC2 Homes and The City of Burlington from the hearing.

CONTEXT AND HISTORY

The Silverwood lands, some 32 hectares in size, are located in the northwest corner of Waterdown in the former Town of Flamborough. The property is bounded on the west by an easement in favour of Sun-Canadian Pipe-Line and Imperial Oil, on the north by Borers Creek, on the east by the DiMarco lands, and on the south by Parkside Drive.

In 2001 the Town of Flamborough was amalgamated into the new City of Hamilton.

In the early 1990's the Town of Flamborough commenced a growth strategy to enlarge the urban area in Waterdown which took the form of Official Plan Amendment No. 28 (OPA 28) to the Town of Flamborough's Official Plan. This Amendment was appealed, was the subject of a consolidated hearing, and in its final form was ultimately approved by a Cabinet Order in Council in June of 2002. Official Plan Amendment No. 28, among other things, brought what is known as the Waterdown North Area into an "Urban" Designation. The lands in the Waterdown North Area are shown on Exhibit 30 and were placed in the Stage 3 area for development by Official Plan Amendment No. 28.

The Order in Council also designated the lands in Official Plan Amendment No. 28 as "Urban" in the Hamilton Wentworth Official Plan and the Niagara Escarpment Plan and required that before development in the new "Urban" Area as set out in the Amendment could proceed that a number of studies were to be undertaken which included the following:

1. A Class Environmental Assessment for the Dundas Waste Water Treatment Plant expansion/diversion;

2. A Master EA Transportation Study;
3. A Waterdown South Sub-watershed Study; and,
4. Secondary Plans where Council deems necessary.

The A Class Environmental Assessment for the Dundas Waste Water Treatment Plant expansion/diversion and the Waterdown South Sub-watershed Study have been completed and a new water tower required for the Waterdown North area is in the tendering process. The Stormwater Management Master Plan findings are being implemented as development proceeds. The Board was advised that there are no sanitary sewer capacity issues with respect to the Silverwood proposal.

In 2003 the City of Hamilton retained consultants to undertake a Secondary Planning Study for the Waterdown North area, being some 133 hectares of land, located north of Parkside Drive and bounded by Centre Road on the east, Borer's Creek to the north and the Sun-Canadian Pipe-Line and Imperial Oil easements on the west. The Appellant's and the other parties to these hearing lands are located within this area.

The purpose of the Secondary Planning Study was to refine the land uses and to establish development guidelines for the orderly and efficient development of the Waterdown North Area. The Secondary Planning Study among other things had the benefit of the studies required by Official Plan Amendment No. 28 as they existed. The results of this Secondary Planning Study found expression in Official Plan Amendment No.109.

The work and studies with respect to the Master EA Transportation Study have been ongoing since 1997. In 2003 the City of Hamilton, as proponent and in conjunction with the City of Burlington and the Region of Halton, commenced what is known as the Phase 2 Waterdown/Aldershot Transportation Master Plan EA Study (TMP). The study's findings were endorsed by the City of Hamilton Council in March of 2006. In February 2008 the report, Exhibit 49, was finalized and the partners are currently undertaking a Phase 3 and 4 Class EA process to refine the recommendations of the TMP including the two major new road corridors found within its study area. It is worthy to note that the City of Hamilton as the proponent while it endorses the findings of the TMP report has not signed a "Notice of Completion" for the Phase 2

Waterdown/Aldershot Transportation Master Plan Study. The general location of the proposed new road network set out in the TMP which is applicable to the matters before the Board are set out at Exhibit 24B.

The Board in a Decision/Order dated June 25, 2008 approved Official Plan Amendment No.109 save and except for certain specific designations and policies as they applied to the Silverwood Homes and DiMarco lands as set out in Attachment 1 to that decision. In all other respects this Amendment No. 109 is in full force and effect.

The Board was advised at the start of the hearing that settlement discussions with respect to the land use designations in Official Plan Amendment No.109 were ongoing and that the proposed Draft Plan of Subdivision had been modified to reflect the discussions to date. Exhibit 17A and 17B reflected the revised Draft Plan of Subdivision as of October 6 2008. The Phase 1 Draft Plan of Subdivision before the Board is broken down into three sub phases on the following basis;

1. Phase 1A comprising 99 units that can be released when the water tower is commissioned.
2. Phase 1B comprising 48 units that can only be released when a second road is provided to Parkside Drive.
3. Phase 1C comprising 18 units that can only be released upon the construction of a storm sewer through the DiMarco and Landmart lands and the construction of a storm water management pond 3 by MC2 Homes.

The revised total number of units as shown on Exhibit 17A is 165 units as opposed to 188 units in the original application.

SUMMARY OF THE EVIDENCE

The Board, during the course of this almost three-week hearing, heard from the following qualified witnesses.

Silverwood Homes Limited

1. Mr. Nick Palomba was qualified to give opinion evidence in the matters of transportation engineering and transportation planning.
2. Mr. Karl Gonnsen was qualified to give opinion evidence in the matters of land use planning.

Landmart Realty Corp

1. Mr. William B. O'Brien was qualified to give opinion evidence in the matters of transportation engineering and transportation planning.

Amedeo DiMarco

1. Mr. Kim Nystrom was qualified to give opinion evidence in the matters of transportation engineering and transportation planning.

The City of Hamilton

1. Mr. Stuart Anderson was qualified to give opinion evidence in the matters of transportation engineering and transportation planning.
2. Mr. Alvaro Almuina was qualified to give opinion evidence in the matters of transportation engineering and transportation planning.
3. Mr. Jamie Bennett was qualified to give opinion evidence in the matters of land use planning.
4. Mr. Jason Thompson was qualified to give opinion evidence in the matters of land use planning.

The Board will give as a summary of what it perceives to be the key evidentiary components provided by these key witnesses before it makes the requisite findings on the matters under appeal. This will form the basis of the findings that the Board makes beginning on page 29 of this decision. These components are somewhat detailed as the varying concepts and opinions placed before the Board by the various witnesses are significant and important. The reader of this decision must therefore focus on both areas

of the decision (SUMMARY OF THE EVIDENCE, and FINDINGS AND CONCLUSIONS). This is done for the sake of the ease of readability so that the findings of the Board can be easily discerned.

The Board at the request of the parties heard the evidence in two distinct parts. The first being the transportation engineering and transportation planning evidence followed by the land use planning evidence.

The Transportation Engineering and Transportation Planning Evidence

The Board heard from Mr. Palomba who was retained by Silverwood in January of 2007 to undertake a traffic impact study for their proposed residential development. The original development for which he undertook a traffic impact study, Exhibit 22, was for some 188 units. The study area he used for his work with Silverwood was the corridor along Parkside Drive between Highway 6 and Centre Street. He indicated that he had followed the standard methodology for transportation impact studies. He assumed 2% annual background traffic growth as well as the following assumptions for approved development to be included in the background growth for his study:

1. Waterdown Bay	250 homes
2. Upcountry Estates Development	250 homes
3. MC2 Homes	185 homes
4. Parks Hills	189 homes
5. Flamborough power centre	270,000 square feet
6. Flamborough retail centre (trinity)	270,000 square feet

He then applied the 188 units anticipated at that time from the Silverwood proposal. He concluded that the 2012 traffic volumes predicted by his study for the peak A.M. and P.M. hour would not significantly impact the five intersections within his study area and would not impact traffic operation along Parkside Drive. He proposed in his original study that the intersection of his client Road "H" and Hollybush Drive to the

immediate south have a left turn lane on Parkside and that this intersection could be eventually signalized.

He admitted under cross-examination that the study area chosen for his Silverwood study was different than the study area that he used in conducting the traffic impact study for the Parkside Hills development to the east and as recommended by the City in an e-mail to his firm, Exhibit 36. He further conceded that the Silverwood development could generate some 10 to 20 peak hour trips to the east/west traffic flow along Dundas Street between Hamilton and Mill Street in the downtown part of Waterdown and that this, in his opinion, was an acceptable increase for this area. These trips were not modelled in his original study.

He proffered to the Board that the peer review conducted by Mr. Anderson and reported in a memo to Mr. Zuidema dated May 27, 2008 confirmed his findings regarding the availability of capacity on Parkside Drive and that, in his opinion, the reduction in the development now proposed by his client (165 units) would have a slight improvement over the network he studied.

He proffered that with respect to the "hot spots" identified in the Dillon Waterdown Area Traffic Monitoring Update September 2008, and shown on Exhibit 24C, that his client's development would contribute less than 1% to the traffic going through the Dundas Street Highway 6 intersection and that this was an acceptable increase that would have little impact on the traffic volumes modelled for this intersection.

In commenting on the Dillon study (Waterdown Area Traffic Monitoring Update September 2008, Exhibit 16 and 16A) he put forward the proposition that this study was not a traffic impact study as the study area was too large noting that his client's property is some 6 kilometres away from the Brant Street/Dundas Street intersection which is considered to be at capacity in the Dillon study.

In his opinion the Dillon study should be viewed as a corridor operational study. He proffered that for a variety of reasons that the Dillon study overestimated the traffic conditions on the network and that its modelling was not reflective of existing or other predicted conditions. He alleges that the Dillon study overcounted the level of commercial development at Dundas and Highway 6 and that the travel time studies

conducted along Dundas Street overstate the delay one would normally experience during the peak hour along this route. In this regard he conducted his own travel time study and commissioned a time travel study by a recognized consulting firm. However, under cross-examination he admitted that the distances examined in his studies were not the same as those of Mr. Almuina and that when presented with similar units of measure the respective studies were not that far apart.

He noted that the gateway intersections of Highway 6 and Dundas Street and Dundas Street and Brant Street which Mr. Almuina in his study (Exhibit 16 and 16A) states are functioning at or above capacity are under the jurisdiction of the Province and the Region of Halton and these jurisdictions did not comment on and or are not concerned about the impacts from the Silverwood development on the intersections for which they have responsibility.

He confirmed under cross-examination that according to Exhibit 35, the Region of Halton in its development charges update did not anticipate improvements to the Brant Street/Dundas Street intersection until 2012 and did not contemplate road widening of Dundas Street to the Hamilton City limit until 2019.

Under cross-examination he conceded that his proposed improvements for through traffic in the downtown Waterdown area were unlikely due to the historic character of the area nor could he provide specifics with respect to costs or the need for land acquisition for the left turn lane that he suggested at Dundas Street and Evans Road. It was subsequently proven by the City that road widening would be required to improve the intersection in the manner suggested by Mr. Palomba.

He also admitted that the v/c ratio of 0.9 used in his study was different than the v/c ratios of 0.85 for through and 0.9 for turning movements suggested by the City.

He concluded his remark by proffering that in his opinion there was traffic capacity to support his client's 165 unit project along Parkside Drive based upon his study and that he does not concur that the capacity issues modelled by Mr. Almuina properly reflect the operation of the road network in Waterdown.

The Board then heard from William B. O'Brien who was retained by Landmart Realty Corp in late 2007 to do a traffic impact study for their proposed development of

128 units on the north side of Parkside Drive immediately east of the DiMarco and Silverwood properties. His report and findings are found at Exhibits 39 and 39A. The study area he used in his traffic impact study was the Parkside corridor from Highway 6 on the west to Evans Road on the east and then from Evans Road south to Dundas Street. He confirmed under cross-examination that the City never formally responded to his study design other than through a telephone call and that at no time was he made aware of any disagreement from City staff with his study design or study area.

He confirmed that since submitting his traffic impact report in January of 2008 that he has not received any feedback from City staff nor was he aware if any peer review has been undertaken with respect to his report.

He reviewed for the Board his methodology for undertaking traffic impact study which, in his words, consists of identifying and modelling three conditions as follows:

1. Identify what is there today from the most recent traffic count information (may go back 2 years).
2. Identify what will be on the network in five years (assume 2% background growth plus other known approved developments at the time of the study. In his study he assumed 630 additional units for MC2 Homes, Parkside Hills and Silverwood Homes).
3. Identify and add your project to the model.

He advised the Board that the City of Hamilton's suggested parameters for what are termed "saturation flow rates" of 1650 vph for through movements and 1500 vph for turning lanes to be used in the modelling for traffic impact studies were, in his opinion, low in comparison to "saturation flow rates" of between 1800 vph and 1900 vph used in similar studies in other Ontario urban areas. In his opinion, the City's "saturation flow rates" result in unrealistic estimations of the performance of the road network.

He proffered the opinion that with the inclusion of the Landmart development the intersections within his study area would continue to function at acceptable levels of service during the weekday peak hours. He freely admitted that the intersections of Parkside Drive and Highway 6 will have some individual movement operating at or near capacity during the weekday AM and PM peak hours and that Evans Road and Dundas

Street will have some congestion at the southbound approach during the weekday AM peak hour. He further opined that a left turn lane might be required on Parkside Drive where his client's development enters this roadway but that, in his opinion, this matter should be evaluated at a later date when final determinations are made regarding Parkside Drive's connections with Highway 6 on the west and the new east/west road recommended in the TMP on the east. In his work he noted that a northbound left turn movement at Evans Road and Parkside Drive might be a "hot spot" which could be corrected by signaling this intersection.

Mr. O'Brien then provided the Board with his opinions with respect to the City's Waterdown Area Traffic Monitoring Update September 2008 (Exhibits 16 and 16A).

He endorsed many of the comments of Mr. Palomba with respect to the study. He noted that the Dillon study takes the position that the Highway 6/Dundas Street and Brant Street/Dundas Street intersections are viewed as the major gateways into Waterdown but did not consider other routes from the south into the Waterdown area such as King, Snake, Kerns and Waterdown Roads in their impact analysis. He believes that the Dillon study overstates the level of congestion at the Brant Street/Dundas Street intersection. In this regard he undertook a one day PM peak hour count for this intersection. The results are shown at table 1 of his October 21, 2008 Report and are not inconsistent with subsequent observed counts taken by Dillon on October 28, 2008, Exhibit 42. His results, based upon his observed counts, shows overall maximum v/c ratio for the critical movement at this intersection in the AM and PM peak hour of 0.92. It was his contention that this is a satisfactory level of operation for this intersection pending the planned improvements in 2012.

He admitted under cross-examination that Kerns Road was a collector road in the City of Burlington that was experiencing "cut through" traffic and that the municipality was looking at ways to reduce this traffic through the residential area. He also freely admitted that the corridor through downtown Waterdown with its on-street parking bays and in particular the Main and Mill Street intersections was an historic area and that it was unlikely that the roadways in this area could be widened or significantly altered to improve through traffic flows as suggested by Mr. Palomba. However he maintained that from his personal experience the travel times through the downtown area were known and acceptable.

He concluded his evidence by stating that, in his opinion, there was sufficient capacity in the road network in Waterdown Area to accommodate the revised anticipated growth from both the Silverwood and Landmart proposals.

The Board then heard from Mr. Kim Nystrom who was retained in July of 2008 to assist DiMarco Construction in making a planning application for the development of their lands as shown on Exhibit 19. He advised the Board that he had not undertaken a traffic impact study for his client as he had been unable to get terms of reference for this study from City staff. He was subsequently retained again in September of 2008 to provide transportation advisory services for DiMarco Construction as it related to their matters now before the Board. He endorses the evidence of Mr. Palomba and Mr. O'Brien and confirmed his opinion that the Dillon study overstates the level of traffic congestion on the immediate road network in Waterdown. He opined that the over count for commercial development as amended by Dillon in their report at Exhibit 16B would, in his opinion, over count the PM peak hour trips by some 1,100 trips. In his opinion, the Dillon study modelling would "surcharge the Dundas Street/Highway 6 intersection by some 1,100 vehicle trips in the PM peak hour". He proffered that the statement in the Dillon report that "one more unit cannot fit into the system as presented on Figures 9 and 10 where there is no clear routing in and out of the OPA 28 lands" was not realistic and that studies such as Dillon's should be viewed as a snap-shot in time. In his opinion, it is new development that will drive the needed improvements to the road network and that one should not have to wait until the proposed additions to the road network as set out in the TMP are fully constructed to meet the build out capacity for the Waterdown area (some 6,500 units). He believes the two developments and road improvements should proceed in tandem.

He conceded under cross-examination that not all of the mitigation measures proposed by Mr. Palomba would help the identified "hot spots" as shown on Exhibit 24C and that he was not familiar with the details of the power centre development.

The Board then heard from Mr. Stuart Anderson who is a consultant retained by the City to undertake peer reviews of traffic impact studies submitted in support of development applications in the Waterdown Area. His peer reviews are found at Exhibit 21 Tab 7. In all cases up to the Silverwood application, and subject to the corrections and modifications he had suggested, he has recommended the acceptance and

approval of the developments as shown on Exhibit 24A for the Waterdown Area from a traffic impact perspective.

He confirmed that in his review of the Parkside Hills traffic impact study that a larger study area was looked at which included the Dundas Street corridor and that this study predicted that in 2011 overcapacity conditions would occur on Dundas Street in the downtown area. He also concluded in his report based upon the findings in Parkside Hills that Silverwood's development would add between 10 to 20 peak hour trips to Dundas Street east of Evans Road. He sees no traffic capacity concerns on Parkside Drive in the immediate vicinity of the Silverwood proposal.

He also concluded from his analysis and knowledge of the area that Silverwood's development would add approximately 10-20 vehicles during the peak hour to the east/west traffic flows on Dundas Street between Hamilton and Mill Street and that there would be no capacity to absorb this additional traffic in the existing road network in this area.

He opined to the Board that permitting further developments in the Waterdown area will add to the critical movements at critical intersections particularly the through movements along Dundas Street at Main and Mill Streets and at the Dundas and Brant Street intersection. He told the Board that the impacts that would result are time delays and that these delays can expand exponentially with increases in traffic volumes using these routes and intersections.

He proffered the opinion that the long term improvements as set out in the TMP for a new east/west and new north/south route (one lane in each direction for both routes) were conditions precedent to allowing for additional new development in the Waterdown area. In this regard he relies on the TMP and Dillon's Waterdown Area Traffic Monitoring Update.

He confirmed on questioning from the Board that he had no transportation policy development responsibilities with the municipality but merely peer reviewed traffic impact studies as requested by the municipality.

He endorses the findings found in the Dillon report as amended Exhibits 16A and 16B and confirmed that the major capacity issues in Waterdown are along the Dundas Street Corridor.

He confirmed for the Board that in his opinion the Dillon Waterdown Area Traffic Monitoring Update September 2008 was a higher level study than a traditional traffic impact study but is not a strategic transportation study such as the TMP. He sees similar conclusion resulting from the Dillon and Parkside Hills studies in that both found existing and common capacity deficiencies in the network particularly at Dundas and Brant Streets and Dundas at Main and Mill Streets.

He confirmed under cross-examination that the study areas have varied for the traffic impact studies that he has peer reviewed particularly of note was the study area for the power centre which only went east on Dundas Street to Hollybush. Even though about 55% of the power centre trips would originate east of Hollybush.

He further confirmed under cross-examination that the Parkside Hills study never mentioned nor did he comment on any impacts resulting from this development on the Highway 6/Dundas Street intersection.

He also confirmed that he was not aware of any network improvements being proposed for downtown Waterdown other than the bypass routes set out in the TMP. He confirmed that while there was capacity on Parkside Drive corridor he maintained that the new east/west route and north/south routes as proposed by TMP were needed to reduce through traffic in the Downtown Waterdown area.

The Board then heard from Mr. Alvaro Almuina whose firm was retained by the City to do the Phase 2 Waterdown/Aldershot Transportation Master Plan EA Study (TMP) and is now engaged in the Phase 3 and 4 parts of this study. He is the author of the Waterdown Area Traffic Monitoring Update September 2008, Exhibits 16A and 16B. He provided very different opinion evidence regarding the capacity of the road network that he studied in the Waterdown area to that of Messrs Palomba, O'Brien and Nystrom.

He reviewed the history of transportation master planning for Waterdown/Aldershot area and the requirements for such works as set out in Official

Plan Amendment No. 28. The Board will deal with the Official Plan matters during its discussion of land use planning evidence.

It is sufficient to say that the Transportation Master Planning Studies have identified the need for both new east/west and north/south additional traffic lanes in the Waterdown/Aldershot area and has proposed a multi-faceted approach to deal with the future traffic capacity issues which include among other things:

1. Implementing transit service to the area and transportation demand management measures to achieve a 10% reduction to single occupant travel.
2. Constructing the east/west roadway generally in the area shown on Exhibit 24B.
3. The development of the north/south link to Highway 403 as shown on Exhibit 24B, and
4. The widening of Dundas Street to a six lane cross-section between the new road link in the area of the Upcountry Estates property to Brant Street.

Mr. Almuina estimates that the earliest the road network improvements being recommended in the TMP could be in place would be in 2015/2016.

Mr. Almuina then reviewed for the Board the methodology and findings contained in his Waterdown Area Traffic Monitoring Update September 2008 report, Exhibits 16A and 16B. He defined the study area for this report as Highway 403 and the north service on the south, Highway 6 on the west, Borers Creek on the north and Brant Street on the east. His methodology for undertaking his study was similar to that described by Mr. O'Brien but with some significant input differences. In his methodology he also undertook some field survey in June of 2008 which included travel time delay surveys on Dundas Street and Parkside Drive, Queue reach surveys in the downtown Waterdown area and time movement delay surveys at key intersections. In inputting traffic data to his modelling he did the following:

1. Took current traffic counts as set in table 4 of his study.

2. Identify what will be on the network in five years (assume 0% background growth but included the following approved developments:

Upcountry estates ...	250 units
Waterdown Bay	250 units
MC2 Homes	181 units
Parkside Hills	207 units
Flamborough Power Centre	25,000 square metres retail/ commercial
Trinity	39,000 square metres retail/ commercial

He subsequently amended his approved growth for the commercial area by some 936 two-way trips for the Flamborough Power Centre and some 243 two-way trips for the Trinity Development, Exhibit 16B. He advised the Board that in his study he assumed v/c ratios of .85 for through movement and 1.0 for turning movements, and that other parameters such as for trip generation and trip distribution as contained in his report were all within established industry norms.

On this basis he modelled the existing conditions and operations of the intersections in his study area as set out on Table 7 of his report and then modelled the operations of the same intersections under the existing plus approved development condition Table 8. In his addendum report Exhibit 16b, he modified his Table 8 to Table 8A to account for the reduction in trips generated from the commercial power centre area. He maintained that even with these adjustments, the intersections of Highway 6 and Dundas Street, Dundas at Main and Mill and Brant Street and Dundas Street have critical turning and through movement that were at or above capacity and that on this basis he concluded that there was no available traffic capacity to allow for any more new development in the Waterdown area.

Mr. Almuina maintained that by not adding a background growth factor of 1% to 2% compounded over the five years, and using a saturation flow rate of 1900 vph and high v/c ratios that he was modelling in a very generous fashion and that his modeling would be underestimating the volumes of traffic on the road network in the Waterdown area. It is on this basis that he believes the intersection set out in Table 8A of Exhibit 16B and in particular Highway 6 and Dundas Street and Brant Street and Dundas Street intersections are at capacity and that no further development should be allowed pending implementation of the recommendations in the TMP.

He advised the Board on the basis of his observed time study data that through traffic in the downtown was experiencing on average a 115 sec delay with a maximum observed delay of 150 seconds which was a service level "F" and that queuing of westbound traffic from Mill Street was more than 25 vehicles on the majority of traffic signal cycles. In his opinion this constitutes an over capacity situation in the existing condition.

He also confirmed for the Board that as part of what he termed his sensitivity analysis he assumed full operation of the new transit service through Waterdown to the Aldershot GO station, reduced projected demand by 10%, assumed the known improvements and signal timing at the Dundas and Brant intersection, did not consider approved development in the Burlington portion of his study area of 2,000 units and still arrived at the same conclusion that the road network along Dundas Street, the major intersections in the downtown and at the gateway intersections of Highway 6 and Dundas Street and Brant Street and Dundas Street were functioning at capacity and, as a result, further development should not be allowed in the Waterdown area.

In response to comments of Mr. O'Brien that he had not considered or distributed traffic to other roads in his study area, he noted that roads such as Snake Road and Kerns Road due to their function (collector roads) and cross-section characteristics should not be assigned through traffic. He opined that it was not good transportation planning practice to assign through traffic to collector roads but instead these roads should be used to direct traffic to the arterial road network. Nor does he accept as sound practice assuming a longer peak hour to distribute traffic through the downtown area as put forward by Mr. Palomba.

He freely admitted that he had reviewed Mr. O'Brien's traffic counts for the Dundas and Brant Street intersection and concluded "that the PM condition at the intersection was no longer critical. However the AM is still operating with the eastbound through movement as a critical movement ((v/c ratio >0.85) (Board notes actual v/c is 0.93)). Hence in his opinion, the AM peak hour conditions at this intersection are still restricting the potential for further development".

The nub of the traffic capacity problems according to Mr. Almuina are the three intersections of Highway 6 and Dundas Street, Brant Street and Dundas Street and the Main Mill and Dundas Street intersections together with the queuing and time delays

along Dundas Street in Downtown Waterdown. In his assessment too many residential units (between 100 to 150) have already been approved for the Waterdown area and that the adding of the additional units proposed by Silverwood will only compound the traffic capacity problems being experienced in the area.

He proffered that no further development should be permitted until the findings of the TMP are implemented or until an interim traffic allocation study is done which might free up traffic capacity for some additional development.

Mr. Almuina admitted under cross-examination that the capacity issues he has identified are functions of time delays one would experience at critical intersections within his study area during the peak hour.

He also agreed when presented with Exhibits 60 and 62 that the City was collecting development charges for the improvements of Parkside Drive that would take it from its rural to an urban cross-section, in some areas five lanes wide, and that in the City of Hamilton Transportation Master Plan these road improvements were recognized for Parkside Drive in the amount of \$9.12 million. In addition, he confirmed that many of the road network additions being proposed by the TMP in the amount of \$54.74 million were included in the City of Hamilton Transportation Master Plan.

He also confirmed under cross-examination that in preparing his revised Table 8A that he made no adjustment for signal timing at Highway 6 and Dundas Street. He was asked to review under cross-examination Exhibits 63 and 64 which compared traffic movements through the Highway 6/Dundas Street intersection as projected in the Power Centres Impact Study, Exhibit 32, and his finding in Exhibit 16B. In all cases for the critical movement he identified in his study for the peak PM hour he had traffic volumes that were actually less than those projected by the Power Centre Study which was subsequently approved. He attributes the volume differences to the assumptions he made for truck traffic using the intersection which, in his view, create longer time delays.

He also confirmed under cross-examination that he had not taken into consideration signal timing improvements in his revised estimates, Table 8A. Yet he maintained that this was a critical intersection that was functioning, in his opinion, at capacity.

He continued to maintain under cross-examination that the Dundas Street/Evans Road/Parkside Drive/Highway 6 route should not be signed as a bypass route to re-route through traffic currently going through downtown Waterdown even on an interim basis. It was his opinion the signing of this as an alternative route was not a reasonable or a preferred alternative to the new route being proposed by the TMP and was not politically acceptable. He proffered that any interim improvements to Evans Road and Parkside Drive would be "throw away costs" due to the recommendations found in the TMP. He contended that an arterial road should function for the local community in which it is located and not act as a bypass route for external through traffic.

He confirmed under cross-examination that, in his opinion, the three intersections of Highway 6 and Dundas Street, Brant Street and Dundas Street and the Main Mill and Dundas Street intersections together with the queuing and time delays along Dundas Street in downtown Waterdown were the critical capacity issues he had identified.

He also admitted under cross-examination that upon build out of the TMP recommendations he could not provide assurance that these critical areas would be operating at a v/c ratio 0.85 which he considered to be the acceptable level of service.

THE LAND USE PLANNING EVIDENCE

Appeal of Official Plan Amendment No. 109

The parties during the hearing of the transportation evidence continued to work towards the settlement of some of the outstanding land use planning matters.

The parties on consent and supported by uncontradicted evidence from all of the qualified planning witnesses recommended that the Board allow the appeal in part to Official Plan Amendment No. 109 and further approve this amendment in the form found at Exhibit 72. The uncontradicted evidence of the planning witnesses was that Exhibit 72 reflected the agreed upon land uses as depicted on the Silverwood Draft Plan of Subdivision was consistent with the already approved portion of Official Plan Amendment No. 109 and posed no consistency issues with the Provincial Growth Plan for the Greater Golden Horseshoe Area legislation, the 2005 Provincial Policy Statement, the Hamilton Wentworth Official Plan and the Town of Flamborough Official

Plan as amended. The Board was also asked to approve the outstanding policy sections deferred and identified by the Board in "Attachment 1" to the Board's Decision/Order dated June 25, 2008 as are consistent with Exhibit 72.

The Draft Plan of Subdivision

Mr. Gonnson, at the start of his testimony, indicated that there had been one change to the Draft Plan of Subdivision, filed as Exhibit 17A, in that a 0.3 metre reserve in favour of the City was being added to the north limit of the Draft Plan of Subdivision and that Exhibit 73 reflected this change, in all other respects the Draft Plan of Subdivision remains unchanged. Again the uncontradicted evidence from all of the qualified planning witnesses was that if the Board saw fit to approve the Draft Plan of Subdivision dated November 17, 2008 as set out on Exhibit 73, that the design of the Draft Plan was in conformity with Official Plan Amendment No. 109 as amended and agreed to by the parties and should be approved.

The parties still have outstanding issues with respect to the prematurity of the Draft Plan of Subdivision from a traffic capacity viewpoint and its conformity with the applicable Official Plan policies with respect to phasing and timing of final registration based upon the traffic capacity issues. These outstanding issues take form of varying points of view held by the parties and their planning witnesses with respect to firstly the conditions of draft approval being proposed by the City and the Appellant.

The City wishes the inclusion in the conditions of draft approval of conditions 27 and 28 (a) which read as follows:

27. That prior to registration of the final plan of subdivision the recommendations of the Waterdown/Aldershot Transportation Master Plan Phase 2 Final Report-February 2008 shall be completed and implemented to the satisfaction of the City's General Manager, Public Works;

28. That prior to registration of the final plan of subdivision, the owner agrees to not enter into any agreements of purchase and sale with end uses* (a defined term Board's emphasis) for the subject lands until such time as;

28(a) the City of Hamilton has advised in writing that it is no earlier than twelve (12) months prior to the recommendations of the Waterdown/Aldershot Transportation

Master Plan Phase 2 Final Report-February 2008 being completed and implemented to the satisfaction of the City's General Manager, Public Works.

The second outstanding issue takes form in the proposed Draft Zoning By-law Amendments submitted by the parties. The City's position is that an "H" holding provision should be included in the Zoning By-law Amendment to the Town of Flamborough Zoning By-law 90-145-Z (Exhibit 78) for the various zoning categories in the Draft Zoning By-law. In all other respects the parties agree with the content of the Draft Zoning By-law Amendment to Zoning By-law 90-145-Z of the Town of Flamborough.

The City's proposed wording is as follows:

That the "H" Holding Symbol shall only be removed conditional upon:

(i) That recommendations of the Waterdown/Aldershot Transportation Master Plan Phase 2 Final Report-February 2008 shall be completed and implemented to the satisfaction of the City's General Manager, Public Works.

The Appellants oppose the inclusion of Draft Plan of Subdivision conditions 27 and 28(a) and the "H" Holding provisions in the draft zoning by-law proposed by the City.

None of the expert planning witnesses proffered that the Board should reject entirely the approval of the Draft Plan of Subdivision on the basis that the proposed development was premature.

If the Board were to find and approve the Draft Plan of Subdivision a second Zoning By-law Amendment is required to By-law 05-200 of the City of Hamilton which deals with the zoning of Parkland and Conservation Hazard Lands shown on the Draft Plan of Subdivision. The uncontradicted evidence from all of the qualified planning witnesses was that if the Board saw fit to approve the Draft Plan of Subdivision dated November 17, 2008 as set out on Exhibit 73 then this by-law, in the form found at Exhibit 70, should be approved.

PLANNING POLICIES

The planning matters still in dispute deal with the interpretations that one should apply to the policy directions found in Official Plan Amendment No. 28 and the applicable policies found in Official Plan Amendment 109 and the 2005 Provincial Policy Statement.

The Board for ease of reference will include the salient Official Plan policies which are as follows:

OFFICIAL PLAN No. 28

- A.1.8 In addition to the foregoing policies and other relevant policies of this Plan, no development shall proceed in Stage 3 until the following are completed:
- i) A class Environmental Assessment for the Dundas Waste Water Treatment Plant expansion/diversion to address the long term servicing solution of Waterdown;
 - ii) A financial strategy for the preferred solution has been determined once the Environmental Assessment process has been completed. Assuming an acceptable financial plan is found, the construction of this project will begin as soon as possible; and,
 - iii) A Master Environmental Assessment Transportation study (Waterdown/Aldershot Transportation Environmental Assessment) as directed by the Joint Board is undertaken, to be funded jointly by the Town of Flamborough, the City of Burlington, the Regional Municipality of Hamilton-Wentworth and the developer parties in Stage 3. The Study shall include an implementation plan in accordance with the terms of reference approved by the Town of Flamborough and the City of Burlington.

The completion of the Master EA Transportation Study (Waterdown/Aldershot Transportation Environmental Assessment) will provide the basis for a new transportation schedule including, if necessary, a Highway No. 5 by-pass. The Study will examine amongst other things, the role and capacity of Waterdown Road, King Road, Kerns Road, Brant Street and Highway No. 5. It is understood and agreed that any recommended solution and implementation thereof that requires alterations of Waterdown Road, Kerns Road, King Road, Brant Street and Highway No. 5 within the City of Burlington, will be in the sole discretion of Burlington City Council, with the exception of Highway No. 5 which will be a joint decision of the City of Burlington, and the Region of Halton. Such recommendations and implementations must be approved by Burlington City Council. It is further understood and agreed that there are fiscal limits to Burlington's ability to afford major road construction or reconstruction projects. In addition, the parties acknowledge that other factors will limit the amount of traffic that such roads can carry because of their residential character and existing design standards. Any recommended solution and implementation that requires alterations of Highway No. 5 within the Town of Flamborough will be the sole discretion of the Town of Flamborough and the Region of Hamilton-Wentworth.

A.1.11 No development shall take place in Stage 3 prior to the fulfillment of Subsection A.1.8 except as follows. If it is determined by the Region and the Town that a housing supply shortfall in Waterdown is imminent, they may approve (subject to the requirements of the *Planning Act*) a limited amount of additional urban residential land in Waterdown for development prior to fulfillment of Subsection A.1.8 to address solely the immediate shortfall provided the following conditions are satisfied:

- i) Sufficient sewage capacity is available for the development;
- ii) The transportation impacts of the development have been evaluated and addressed;
- iii) The Environmental Assessment for the Transportation Master Plan (Waterdown/Aldershot Transportation Environmental Assessment) is proceeding expeditiously and has advanced to the stage where the alternatives have been identified and the potential routes have been identified for evaluation;

- iv) The development will not impact, prejudice or compromise secondary planning processes, the Transportation Study process, or any of the alternatives or alternative routes under consideration in the Environmental Assessment process for the Transportation Master Plan (Waterdown/Aldershot Transportation Environmental Assessment) or the evaluation and selection of alternatives or the implementation of the preferred alternatives; and,
- v) The development does not prejudice or compromise the Environmental Assessment process and associated financing for the waste water treatment solution.

OFFICIAL PLAN AMENDMENT No. 109

Development Phasing Policies

A.8.13.3 Significant transportation network improvements are required throughout the Waterdown Aldershot Master Transportation Plan Area prior to the development of much of the Waterdown North community. No development may proceed in Waterdown North until the following conditions have been completed to the satisfaction of the City:

- i) A traffic study has been prepared by the developer demonstrating that excess capacity exists to accommodate the proposed development, or;
- ii) Where it has been demonstrated that no excess capacity exists, no development may proceed until such time as the following conditions have been satisfied to the satisfaction of the City;
 - a) completion of the Waterdown Aldershot Transportation Master Plan;
 - b) construction of required transportation upgrades and/or improvements, land dedication, and/or financial contributions as determined by the City, pursuant to the Waterdown Aldershot Transportation Master Plan and the approved Secondary Plan to accommodate the new development proposed; and,
 - c) the City may require a Traffic Impact Study to demonstrate that any phasing of the developable land can be accommodated in the overall network for Waterdown/Aldershot.

The Board then heard from Mr. Karl Gonnson who was retained by Silverwood to assist them in their development approval applications to the City. He confirmed that the parties were satisfied with the land use designations road pattern and the sub-phasing of development as set out on the revised Draft Plan of Subdivision now shown on Exhibit 73.

He also indicated his client supports the further approval of Official Plan Amendment No. 109 in the form set out at Exhibit 72. He confirmed for the Board that the conditions of draft approval being proposed by his client would fulfil the undertakings given at the commencement of the hearing with respect to the issues of Sun-Canadian Pipe-Line, MC2 Homes and the City of Burlington.

He opined that the size and function of the storm water management pond on Silverwood's lands would implement the Master Stormwater Drainage Plan and that the road pattern in the draft plan would implement the road pattern set out in Official Plan Amendment No. 109. He advised the Board that the conditions of Draft Approval required that the final plan for the Phase 1A area could not be registered until the Water Tower to be constructed in the Parkside Hills area was completed and commissioned. He anticipates that this work will be completed by 2012.

He proffered the opinion that all of the criteria prescribed by Section 51(24) of the *Planning Act* had been complied with and that the development should be allowed to proceed subject to the conditions of draft approval being put forward by his client, Exhibit 90.

He proffered that placing a "H" holding condition in the zoning by-law and the conditions found at conditions 27 and 28A were unreasonable as, in his opinion, there was no traffic capacity issue resulting from his client's development. He noted that in fact only the Phase 1A area, some 99 units, could be built in the near future as the remaining two phases were dependent upon the timing and development of other land owners in the area.

It was his opinion that as a result of the findings and recommendations of his client traffic impact study that the policy conditions of Official Plan Amendment No. 28 being clause A.1.1.1(ii) had been satisfied and similarly that the phasing policy set out in Official Plan Amendment No. 109 being Section A.8.13.3(i) has been satisfied as well.

He proffered that the proposed development was a compact form of development contemplated by the 2005 Provincial Policy Statement and was in conformity with the road and land use Schedules set out in Official Plan Amendment No.109. He noted that his client had made allowance for the new east-west road as set out in the TMP and was agreeable to dedicate its portion of this new road when the final alignment was determined as set out in clause 21 of the conditions of draft approval. Condition 21 is consented to by his client only on the basis that the draft plan is approved and conditions are applied as set out in Exhibit 90 and that no "H" holding provisions are placed in the Zoning By-law Amendment.

He proffered the opinion that it was normal to have new development and new transportation infrastructure as being proposed in the TMP to proceed simultaneously, particularly when there was an available existing road network in place and that it was unreasonable and not normal to freeze development until new transportation infrastructure was implemented and built. In his opinion, the more common approach would be to optimize the existing road network system before embarking on the construction of a \$54 million new project and that this was consistent with the PPS direction set out in Section 1.6.2.

He concluded his remarks by proffering that the proposed development as shown on Exhibit 73 was not premature, was in the public interest and in conformity with the planning policies of Official Plan Amendment No. 28 and Official Plan Amendment No. 109, and that the conditions being proposed by his client were in the public interest, and would assist in meeting the housing shortfall in Waterdown consistent with the planning objective of Official Plan Amendments No. 28 and No. 109.

The Board then heard from Mr. Bennett who was retained by the City in 2003 to undertake a secondary planning study for the Waterdown North Area. He had the benefit of the major studies either under way or completed as directed by Official Plan Amendment No. 28. The results of his study found form in Official Plan Amendment No. 109 that was passed by Hamilton City Council in March 2007. This Amendment provides detailed land use designations for the area, identifies arterial and collector road patterns for the Waterdown North Area including a generalized location for the new east-west road proposed in the TMP study. He proffered to the Board that the phasing policies of Official Plan Amendment No. 28 should be read in conjunction to the phasing

policies of Official Plan Amendment No. 109 as found at Section A.8.13.3. He confirmed on questioning from the Board that Section A.1.1.1(ii) of Official Plan Amendment No. 28 and Section A.8.13.3(i) in Official Plan Amendment No. 109 should be considered as the same, namely that there is a need to demonstrate that there is traffic capacity to support one's development. He relied on the work done in the TMP when he developed his phasing policies that required that one needed to demonstrate that one's development has traffic capacity in order for development to go forward.

He relied on the evidence of Mr. Almuina that there was no road network capacity in Waterdown to support the Silverwood development and on this basis he opined that the proposed Draft Plan of Subdivision should be considered premature and not in conformity with the phasing policies of the Official Plan unless the "H" Holding Provisions were included in the Zoning By-law Amendment and conditions 27 and 28(a) were included in the Conditions of Draft Approval. He has no urban design issues with the revised Draft Plan of Subdivision now before the Board. He supports the "H" Holding provisions in the City's zoning by-law, Exhibit 78, and condition 27 and 28A, Exhibit 82, which would prohibit registration of the Draft Plan of Subdivision and the sale of lots until the TMP is completed and the works are implemented to the satisfaction of the City's General Manager of Public Works.

He confirmed on questioning from the Board that the only phasing provisions in Official Plan Amendment No. 109 were found at Section A.8.13.3 and that no capacity limits or directions establishing the order by which lands should be developed were contained in Amendment No. 109.

The Board then heard from Mr. Jason Thompson, a Senior Project Manager with the City of Hamilton, who has had responsibility for the Silverwood file. He endorses the evidence of Mr. Bennett regarding the methods and conditions being proposed by the City in the approving of the Draft Plan of Subdivision. He also confirmed that, in his opinion, the "housing supply shortfall in Waterdown was imminent, and as such the provisions of Section A.1.11 and in particular Section A.1.11(ii) in Official Plan Amendment No. 28 and Section A.8.13.3 (i) in Official Plan Amendment No. 109 were the major policy determinants in this case.

These matters are not in dispute among the planning experts.

Mr. Thompson, in his witness statement, noted the development pressure in the Waterdown Area and indicated that the City had given draft approval for some 738 dwelling unit but that only 250 units had been registered and of those 250 units only 197 building permits had been issued to date.

He confirmed that the Silverwood application for a Draft Plan of Subdivision was received before the passing of the Bill 51 Amendments to the *Planning Act* but that the Zoning By-law Amendment application was filed after the passing of the Bill 51 Amendments.

Mr. Thompson in reviewing the "H" Holding provisions in the City proposed Zoning By-law Amendment and conditions 27 and 28(A) of the City's Conditions of Draft Approval put weight on the fact that the City's Economic Development and Planning Committee had passed the following resolution in an "in camera" session found at Exhibit 14, tab 13.

- (a) That the City of Hamilton considers the developments proposed with appeals initiated to the Ontario Municipal Board, including those of Silverwood Homes limited, Landmart Realty Corp., and MC2 Homes, for lands in Waterdown North to be premature from a traffic capacity perspective;
- (b) And that City staff be directed to investigate potential interim measures for development in Waterdown including, but not limited to, a City initiated Official Plan Amendment to modify the existing staging policies, an interim control by-law and a transportation allocation program, and report back to the Committee thereafter, on the analysis of the options and to recommend a strategy to address traffic capacity infrastructure constraints.

He proffered that the transportation allocation study had commenced with Mr. Almuina's firm and held some hope that this study might allow the release of development prior to the completion and implementation of the TMP.

Under cross-examination he confirmed that the City staff had not as yet reported back to Council as required by the resolution and that none of the alternatives set out in

the resolution had been evaluated or considered. He also admitted that the resolution resulted from an "in camera" meeting, that no planning reports or the traffic impact studies prepared or received by the City from the respective developers were presented to the Committee and to the best of his recollection Mr. Almuina provided the Committee with a summary of his findings.

He confirmed as well that City Council at its meeting of October 15, 2008 had directed staff to support the partial settlement of Official Plan Amendment No. 109 while maintaining that the Silverwood development was still premature from a traffic capacity perspective.

He concluded his remarks by proffering the opinion:

that the proposed Silverwood Homes Limited development has appropriately addressed all matters of Provincial interest and is consistent with the Provincial Policy Statement; meets all the requirements of the *Planning Act* and satisfies the Criteria set out in Section 51(24) of the *Act*; conforms to the Hamilton Wentworth Official Plan and the Town of Flamborough Official Plan including the policies of OPA 28; and is not premature, is in the public interest and represents good planning.

His only caveat to this opinion evolves around this issue of traffic capacity and the inclusion of the "H" Holding provision and the inclusion of Conditions 27 and 28(A).

He confirmed on question from the Board that his best estimate of when the TMP would be completed and implemented would be 2018, and that the special conditions being recommended by the City would take precedent over the City's general draft plan conditions. He also proffered the opinion that the conditions such as found at Conditions 27 and 28(A) that could prohibit any development on the Silverwood property for at least 10 years was not, in his opinion, recognizing and sanctioning a premature development.

FINDINGS AND CONCLUSIONS

The Board, after carefully reviewing the evidence, the exhibits filed and the submissions made by the parties makes the following findings.

The Board accepted and adopts the uncontradicted evidence of the planning witnesses that Official Plan Amendment No. 109 should be further approved in the

manner presented at Exhibit 72. This further amendment reflects the agreed upon land uses for the Silverwood and DiMarco lands as depicted on the Silverwood Draft Plan of Subdivision, is consistent with the already approved portions of Official Plan Amendment No. 109 and poses no consistency issues with the Provincial Growth Plan for the Greater Golden Horseshoe Area legislation, the 2005 Provincial Policy Statement, the Hamilton Wentworth Official Plan and the Town of Flamborough Official Plan as amended. The Board will also further approve all the outstanding matters with respect to Official Plan Amendment No. 109 that are consistent with Exhibit 72 and deferred by the Board in its Decision/Order dated June 25, 2008.

The Board, at the outset, wishes to make it clear that the findings the Board makes in this decision apply only to the Silverwood Homes Limited appeals and the further approval of Official Plan Amendment No.109 as they apply to the DiMarco lands and should not in anyway be construed to sanction or approve any development applications by any other party to these hearings. The DiMarco and Landmart Realty Corp. applications are currently before the Municipality and under review. It is not the intention or the jurisdiction of the Board to interfere in the normal planning review process for these other applications. They must be judged first on their own merits by the municipality.

Counsel for the municipality reminded the Board that the zoning by-law application was subject to the new rules under the Bill 51 Amendments to the *Planning Act* and as such suggested that the Board should give deference to Council's decisions before and after the appeals were received by the Board.

Section 2.1 of the *Planning Act* as amended by Bill 51 states:

2.1 Decisions of councils and approval authorities

When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

- (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and
- (b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a). 2006, c. 23, s. 4.

Counsel for the City encourages the Board in particular to have regard for the resolutions passed by the Economic Development and Planning Committee in its "in camera" session when Counsel for the City was seeking his instructions for this hearing and the subsequent resolutions of City Council regarding the litigation of the matters now before the Board. The Board has the resolutions of Council and its Committees as set in Exhibit 14 and has during this hearing had regard for the evidence of Mr. Thompson and Mr. Almuina regarding these meetings. There is no compelling evidence as to what Council and its Committees had before them when they passed their resolutions. The evidence of the City planner is that the material was limited and the minutes of the Committee meeting of September 16, 2008 and the Council meeting of October 15, 2008 contained in Exhibit 14 indicated that Mr. Almuina, the City expert on traffic capacity issues, was not even present. The resolutions have been put before the Board and evidence has been lead as to their meaning and the Board will have regard to these decisions as it must for the rest of the planning policies adopted by City Councils for this area.

It would be a dangerous precept for the Board to expect or require resolutions passed by a Council or its Committees in properly constituted "in camera" proceeding to be placed before it before considering a matter duly under appeal.

Clearly a fair reading of Section 2.1 must be read in the full context of the *Planning Act* Amendments. In the case at point it is the decision that Council made with respect to the Zoning By-law appeal now before this Board that the Board is compelled to have regard to in arriving at its decision on the matters under appeal.

The simple fact is that Council failed to make any formal decision on the Zoning By-law Application of Silverwood in the time frames prescribed by the *Planning Act*. The intent of much of the Bill 51 Amendments was to ensure that Council had all of the information and material necessary to make a decision and the role of the Board is that of an appellant body as opposed to a primary or alternative decision maker.

The Minister responsible for Bill 5.1 during second reading of the Bill on April 19, 2006 stated:

I can't repeat often enough. The OMB should not be a primary decision body, but should deal strictly with appeals of matters that come before council, on which a

council decision is made, and whether or not that decision is in accordance with the provincial policy statement and the municipality's own official plan.

During the course of this hearing no motions were brought by any party pursuant to Section 34(24.4) to refer any of the material adduced in the hearing back to City Council on the basis that "the information and material could have materially affected the council's decision."

The entire focus of this hearing evolves around the policy framework established by various Councils for the municipality over the years as reflected in their Official Plan documents and properly approved studies for the orderly development of the Waterdown Area. This is the very substance of what the Board must have regard to in deciding the matters now before it. These matters must be considered carefully in light of all of the evidence including the Council and Committee resolutions placed before the Board without deference to any particular decision of the Council.

Counsel for Landmart put forward the proposition that the policies of Official Plan Amendment No. 28 as set out in Section A.1.8 have been met.

In this regard he relies on the definition of the word "undertaken" as used in clause A.1.8(iii) of Amendment No. 28 and the definition of "undertaken" in the Compact Oxford English Dictionary which defines the meaning of "undertaken" as to "commit oneself to and begin". It is his proposition that because the TMP had "begun" (undertaken) that all of the conditions of Official Plan Amendment No. 28 have been met and that the policy tests now fall to Official Plan Amendment No. 109 and that further the notwithstanding clause in Official Plan Amendment No. 28 requiring an "imminent shortage in housing supply" to trigger consideration of new development prior to the completion of the TMP would no longer apply.

The Board after a careful review of Official Plan Amendment No. 28 does not accept or adopt the proposition of Counsel for Landmart. It is clear to the Board that Amendment No. 28 was designed and intended to have the required infrastructure studies be completed and where required the necessary infrastructure in place and that the notwithstanding clause should be viewed as interim measure and not the norm. There is a significant body of Board decisions and common planning practice that Official Plans are policy documents that should be given a broad and liberal interpretation.

In the regard the Board accepted and adopted the evidence of Mr. Bennett and Mr. Thompson that the applicable Official Plan tests in the matters before the Board are set out at A.1.11(ii) in Official Plan Amendment No. 28 and Section A.8.13.3(i) in Official Plan Amendment No. 109 which state:

OPA No. 28

“The transportation impacts of the development have been evaluated and addressed”
and

OPA No.109

“A traffic study has been prepared by the developer demonstrating that excess capacity exists to accommodate the proposed development to the satisfaction of the City.”

or in this case the Board, and that these sections only come into play if the notwithstanding provision of Official Plan Amendment No. 28 that there is an “imminent shortage in housing supply” has been met in the first instance.

It is unfortunate that the City of Hamilton does not have clear and published terms of reference for traffic impact studies for the Waterdown Area that would provide for consistent reporting of traffic impact findings. It is equally unfortunate that competent traffic consultants did not feel compelled to use a consistent study area for their work in Waterdown North.

It is also unfortunate that the City has not published the standards and parameter it uses in judging traffic impact studies. The evidence before the Board is that no clear objective standards exist for these types of studies in Hamilton.

It is clear to the Board after hearing the varied and divergent opinions of the transportation experts that the modelling of transportation networks while a science is equally an art form that requires sensitivity and judgement. The parameter used, the data employed, the size and nature of the area under study, the level of time delay to be tolerated can and do affect the modelling outcomes and that many of these judgements are subjective in nature.

It is clear to the Board that many of the traffic capacity issues in downtown Waterdown are a function of history and recent urban designs intended to preserve and enhance the current land uses in the area. Mr. Almuina, on questioning from the Board,

conceded that to some degree the issue of capacity in the Dundas Street corridor is a bit of a "catch 22" in that, for other valid planning reasons, the municipality does not want to improve the through traffic movement in this area and as such the capacity issues he identified in his study will continue. He could offer no assurance that the TMP proposed improvements would significantly improve the current situation in the downtown, nor would he support any interim measures such as the identification of the Dundas Street/Evans Road/Parkside Drive as an alternative bypass route. The Board concludes from the preponderance of the evidence the issues of traffic capacity delays in the downtown are avoidable or are a matter of choice for those who use the area regularly and do not constitute a traffic safety issue. In this regard the Board prefers the evidence of Mr. O'Brien.

The Board finds that the additional vehicle trips in the peak hour generated by the Silverwood development may create some time delays in the downtown area but when balanced against the planning objectives associated with this heritage area, the parking needs of downtown businesses, and the "imminent shortage in housing supply" are acceptable and do not constitute sufficient grounds to halt the entire Silverwood development.

The Board heard no evidence of any traffic safety issues at any of the "hot spots" along the Dundas Street corridor including the gateway intersections at Highway 6 and Dundas Street, and Brant Street and Dundas Street. The traffic capacity issues as pointed out by all of the transportation experts are clearly ones of a time delay with respect to certain critical movement at these intersections.

The Board would note that with respect to the two intersections, Highway 6 and Dundas Street, and Brant Street and Dundas Street, the respective jurisdictions that have responsibility for these intersections have raised no concerns regarding the Silverwood proposal.

In considering the Highway 6/Dundas Street intersection, Exhibit 63 and 64 are instructive insofar as to demonstrate the differing perspectives on what constitutes capacity issues and the dilemma facing the Board in considering the conflicting transportation evidence before it. The findings in Exhibit 32 which were acceptable to the MTO and the City at that time showed a total traffic volume of some 8,000 vehicles

and v/c ratio in excess of 0.9 for many critical movements in the PM peak hour and this condition was deemed at that time to be an acceptable level of service.

Mr. Almuina without considering signal adjustments and with traffic volumes of some 6,121 vehicles for the same time peak hour period projects higher v/c ratio even though his traffic volumes for the critical movements at the intersection are lower than those predicted by the power centre study. If this intersection was deemed to be operating at acceptable levels with higher volume of traffic why is it now not acceptable when one predicts lower traffic volumes through the critical movement at the same intersection? Similar logic can be applied to some of the critical movements at the Brant Street/Dundas Street intersection from the data supplied to and reviewed by the Board.

The Board, during the course of the hearing, heard conflicting opinions on what constitutes an appropriate study area for a traffic impact study in support of a development. These differences are reflected in the study area described by the various witnesses in their respective studies described earlier in this decision. The Board finds after considering the evidence of the witnesses that a traffic impact study in the context of a development approval is a local and operational tool that must be applied to the immediate area of the development. To extend a local traffic impact study's reach some 6 Kilometres and into other jurisdictions seems in the Board's findings to be patently unreasonable. The question becomes where do the traffic impact study boundaries stop? This is one of those subjective variables for which no clear criteria from the municipality is available as witnessed in the power centre study and the Parkside Hills reports. The Board, based upon the evidence and without clear directions as to what constitutes an acceptable traffic impact study area, prefers the evidence of Messrs Palomba and O'Brien and is satisfied that in this case the traffic impact study of the developer has addressed the requirements of the Official Plan policies in place. That is not to say that the more strategic transportation studies like the TMP might not go beyond municipal boundaries or that the City in the future might not establish acceptable study area standards for local traffic impact studies. The Board, as it indicated earlier, finds it unfortunate that the City did not have clearly defined and published terms of reference for the local traffic impact studies that it is requiring as part of its development approval process. This would have benefited all concerned.

The Board accepts the evidence of the transportation witnesses that there are no capacity issues on Parkside Drive. The Board would note that Parkside Drive is an arterial road, a designation carried forward in Official Plan Amendment No. 109, that it has been shown in both the City's Development Charges By-law and City of Hamilton Master Transportation Plan to be widened and improved. These are the policy directions in place that the Board must have regard to and are preferred to the evidence of Mr. Almuina that the TMP may change the designation of Parkside Drive in the future and the evidence of Mr. Thompson that a future transportation allocation study may find solutions to the professed traffic capacity issues presented in this hearing.

Counsel for the municipality invited the Board to prefer the evidence of its transportation witnesses that the capacity issues as identified at this point in time are so severe that no further development should be permitted in the Official Plan Amendment No. 28 area and that the Board should then conclude from the City's planning witnesses that the conditions for the "H" Holding provisions in the Draft Zoning By-law and conditions 27 and 28(A) of the Draft Plan Approval conditions do not mean withholding development approval until the completion and implementation of the TMP because, as contained in the Council resolution, the City has commissioned a traffic allocation study which may allow for the earlier release of units.

If the Board is to accept the evidence of Mr. Almuina that not one unit of development can be accommodated and that probably 150 units too many have been approved by the municipality in the Waterdown area. Then how can one give credibility to the notion that the same expert who has detailed knowledge of the Waterdown transportation network and has testified that no capacity exists in the road network in and around Waterdown and who does not support signage of an existing alternative route as an appropriate interim solution can now somehow, through an allocation study, develop different findings with respect to capacity prior to the completion of the Road network his firm is recommending in the TMP study.

The Board would note that the structure of the phasing approval agreed to by the parties for Silverwood effectively deals with 99 units in Phase 1A and that even this development will not be able to come to the market until 2011/2012 at the earliest. The remaining Phases 1B and 1C are conditional upon the approval of other developments

to the east for which the timing is, at best, uncertain. This is an appropriate development control technique and is reflected in the conditions of draft approval.

The Board accepts the uncontradicted evidence of the planning witnesses that an "imminent housing shortfall in the Waterdown area exists" and finds that in light of the agreed upon imminent housing shortage, and the time required to bring housing units on stream that it is a reasonable balance from a planning perspective to accept in the short term some capacity time delays in the road network to meet this housing goal.

The evidence before the Board is that improvements to those parts of the network under the jurisdiction of the MTO and the Region of Halton are ongoing to meet anticipated needs. The City of Hamilton, through its subdivision approval process, is securing road widening for Parkside Drive consistent with its Development Charges By-law and the approved Hamilton Transportation Master Plan document. Even the recently approved Official Plan Amendment No. 109 continues to show Parkside Drive as an Arterial Road.

The Board prefers this evidence to the speculation that Parkside Drive may be downgraded upon the completion and approval of Phases 3 and 4 of the TMP.

The more compelling evidence in the Board's findings is that capacity exists on Parkside Drive and the planning policy regime of the City of Hamilton recognizes this and is securing the upgrades of this road as development proceeds and that this is a common and well accepted planning practice.

The Board is also satisfied from the evidence that with respect to the gateway intersections at Highway 6 and Dundas Street, and Brant Street and Dundas Street, that the respective jurisdictions have ongoing plans to upgrade these intersections as required. The Board would note that no traffic safety issues were raised with respect to the performance of these intersections and that these improvements will occur as required. It is also the Board's findings that the conditions along Dundas Street in the downtown Waterdown area are acceptable when balanced against the other planning objectives established for this area.

The Board finds on balance that the requirements set out at A.11.1(ii) in Official Plan Amendment No. 28 and Section A.8.13.3(i) in Official Plan Amendment No. 109

have been met and that there is capacity in the Waterdown road network to support the Silverwood Phase 1 development.

In light of the Board's findings with respect to the issue of traffic capacity, the Board finds no reason to require the "H" Holding provisions in the Zoning By-law Amendment proposed by the City, nor does the Board see any merit in imposing conditions 27 and 28A in the conditions of draft approval. In all other respects the Board accepts and adopts the uncontradicted evidence of the planning witnesses with respect to the Zoning By-law Amendment and conditions of draft approval.

DISPOSITION OF THE APPEALS

Accordingly, and for the reasons contained in this decision,

1. **THE BOARD ORDERS** that the appeal is allowed in part and Amendment No. 109 to the Official Plan of the former Town of Flamborough is modified as set out in Attachment "1" and, further, the matters as set out and deferred by the Board's Decision/Order dated June 25, 2008 that are consistent with Attachment "1" to this Order are further approved.
2. **THE BOARD ORDERS** that the appeal against By-law No. 05-200 of the City of Hamilton is allowed in part, and By-law No. 05-200 is amended as set out in Attachment "2" to this Order and is approved, in all other respects, the Board Orders that the appeal is dismissed.
3. **THE BOARD ORDERS** that the appeal against By-law No. 90-145-Z of the former Town of Flamborough is allowed in part, and By-law No. 90-145-Z is amended as set out in Attachment "3" to this Order and is approved, in all other respects, the Board Orders that the appeal is dismissed.
4. **THE BOARD ORDERS** that the appeal is allowed and the draft plan shown on the plan prepared by Metropolitan Consulting Inc. dated November 17, 2008 being Part of Lot 11 Concession 4 formerly the Township of East Flamborough now in the City of Hamilton is approved subject to the fulfilment of the conditions set out in Attachment "4" to this Order;

AND THE BOARD ORDERS that pursuant to subsection 51(56.1) of the *Planning Act* the City of Hamilton shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Act*. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

This is the Order of the Board.

"J.P. Atcheson"

J.P. ATCHESON
MEMBER

OMB File No.'s PL080150 & PL080167

Authority:

Bill No.

CITY OF HAMILTON

BY-LAW NO. 08 - [REDACTED]

To Amend Zoning By-law No. 05-200

Respecting Lands Located at 111 Parkside Drive, Concession 4, Part of Lot 11 (East Flamborough), in the former Town of Flamborough, now in the City of Hamilton

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S.O. 1999, Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

AND WHEREAS it is desirable to enact a new Zoning By-law to comprehensively deal with zoning throughout the City;

AND WHEREAS the first stage of the new Zoning By-law, being By-law 05-200, came into force on May 25, 2005;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the Former Town of Flamborough, approved by the Minister under the Planning Act on September 27th, 1988) in accordance with the provisions of the Planning Act;

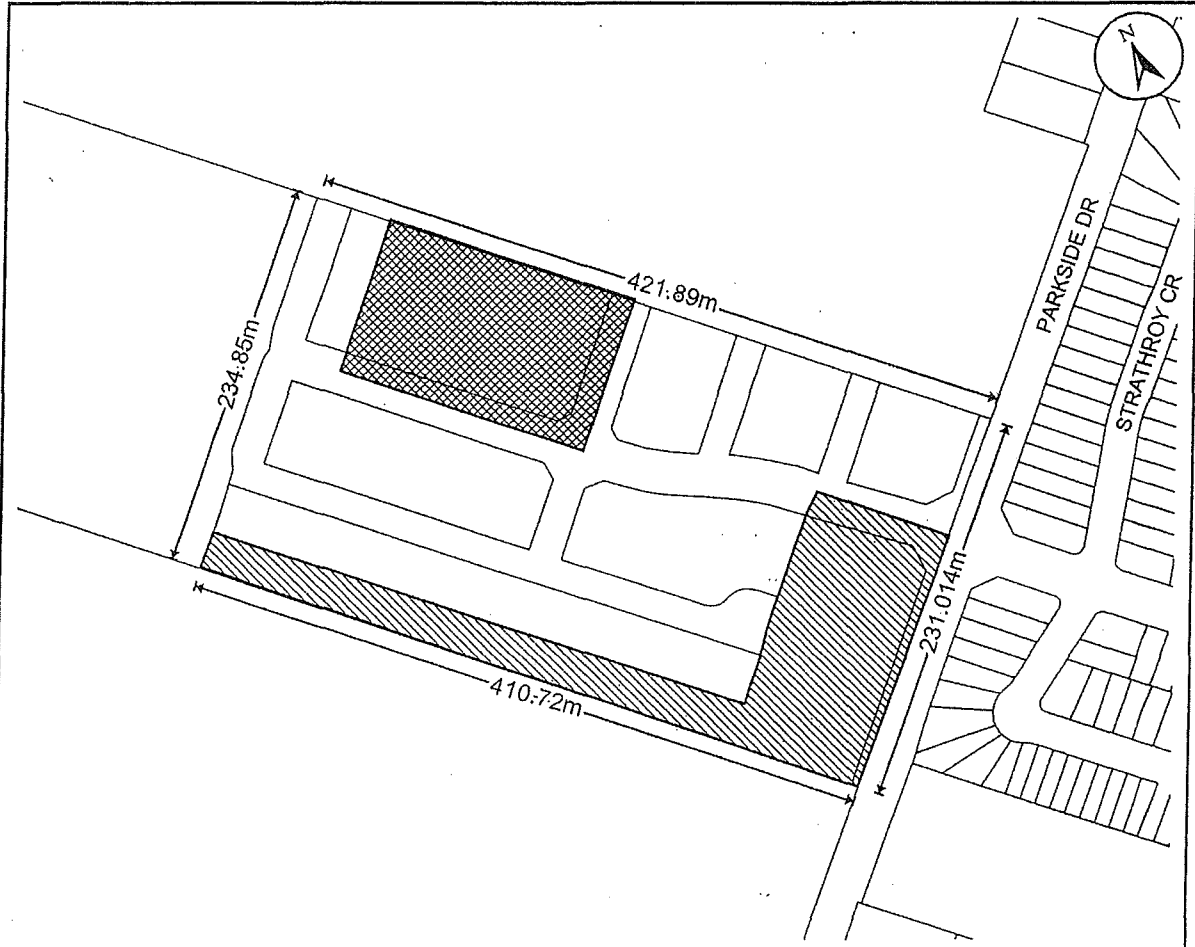
NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. That Maps 479, 514 and 515, of Schedule "A" to By-law 05-200 are amended by incorporating the Neighbourhood Park (P1) Zone (Block "1"), and Conservation/Hazard Lands (P5) Zone (Block "2") boundaries for the applicable lands, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A" to this By-law;
2. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this [REDACTED] day of [REDACTED], 2008.

Fred Eisenberger
Mayor

Kevin C. Christenson
Clerk



This is Schedule "A" to By-Law No. 08-
 Passed the day of, 2008

 Clerk


 Mayor


Schedule "A"

Map Forming Part of
 By-Law No. 08-_____

to Amend By-law No. 05-200

Subject Property
 111 Parkside Drive
 (Part of Lot 11, Concession 4 - East Flamborough), Waterdown

 **Block 1**
 Lands to be Zoned Neighbourhood Park (P1) Zone

 **Block 2**
 Lands to be Zoned Conservation/Hazard Land (P5) Zone

Scale: N.T.S.	File Name/Number: ZAR-07-039
Date: October 27, 2008	Planner/Technician: JT/MS
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

