

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local

14-120-LPAT-05

**Attachment 1 &
Exhibit 2, at Tab 1,
Paragraphs 1 & 2**



ISSUE DATE: June 22, 2018

CASE NO(S): PL140601

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	2261305 Ontario Inc.
Appellant:	549367 Ontario Ltd.
Appellant:	783878 Ontario Ltd.
Appellant:	Nick and Anna DeFilippis; and others
Subject:	Proposed Official Plan Amendment No. 17 UHOP
Municipality:	City of Hamilton
OMB Case No.:	PL140601
OMB File No.:	PL140601
OMB Case Name:	DeFilippis v. Hamilton (City)

Heard: January 5, 2018 in Hamilton, Ontario and
May 25, 2018 by telephone conference call

APPEARANCES:

Parties

City of Hamilton

Petar Djeneralovic
2261305 Ontario Inc.
Nick and Anna DeFilippis

Ray Bucci
783878 Ontario Ltd.
c.o.b. Bucci Homes

Counsel/Representative*

Joanna Wice
Michael Kovacevic

Sean Gosnell
Isaac Tang (in absentia)

Michael Connell

2294643 Ontario Inc. ("Movengo")

Raj Kehar
Mary Bull (in absentia)

549367 Ontario Ltd.

Victor Fontana

DECISION DELIVERED BY J.V. ZUIDEMA AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This decision involves the Urban Hamilton Official Plan Amendment ("UHOPA 17") which also includes the Fruitland-Winona Secondary Plan ("FWSP"). There have been a number of Pre-Hearing Conferences ("PHC") as well as Telephone Conferences Calls ("TCC") in the past associated with UHOPA 17 wherein the Board, as it was previously constituted, case managed the various appeals.

[2] In some instances, appeals were withdrawn. In other instances, appeals were dismissed, settled or scoped and decisions arising from those hearing events have been issued. The reader is directed to those earlier dispositions for the history and background of the matters associated with UHOPA 17.

[3] This particular decision addresses two matters:

- a. A Motion ("Contested Motion") brought by the City of Hamilton ("City") for an Order declaring the FWSP is approved in its entirety, except those lands subject to specific appeals, as set out in the City's Amended Motion pages 4 to 6 of Exhibit 2. This Motion was contested by Petar Djeneralovic, 2261305 Ontario Inc., and Nick and Anna DeFilippis ("Respondents").

Although Valery Homes Stoney Creek Limited ("Valery Homes") was listed with the Respondents in the Response Motion materials (filed as Exhibit 3), Valery Homes did not and does not have party standing. A Motion for Party Status for Valery Homes had been filed but adjourned in the past and to date, that motion has not been argued.

The Contested Motion was heard on January 5, 2018 but at the request of the parties, a decision was not issued until another Motion, listed below was finalized; and,

- b. A Settlement Motion brought by the City concerning an appeal launched by 549367 Ontario Ltd. This Motion was heard via TCC on May 25, 2018.

Settlement Motion:

[4] I will address the Settlement Motion first as it was uncontested. I received a sworn affidavit from professional land use Planner, Ms. Alissa Mahood. She is the in-house City Planner having carriage of these matters. Her affidavit, filed as Exhibit 6, was thorough and complete. She methodically and cogently set out the circumstances which led up to the settlement.

[5] In a nutshell, two schools had been identified by the Hamilton Wentworth District School Boards to be needed for the area. Over time, that position changed and only one school was necessary. The request was to re-designate the area for one of the school sites from "Institutional" to "Medium Density Residential."

[6] This particular appeal was the only remaining appeal of the entire plan and given this settlement, that would no longer be the case. The City was anxious to have the FWSP in place, save and except for those portions subject to site specific appeals.

[7] The opinions which Ms. Mahood expressed were not challenged by any other party during the TCC. She opined that the proposed settlement met all the requisite statutory requirements, conformed to or were consistent with, as the case may be, to the operative provisions of provincial policy, represented good and proper planning and were in the public interest.

Settlement Order:

[8] I was satisfied with the evidence as presented in her affidavit. As such, I provided an oral decision granting the Settlement Motion. For specificity, the Tribunal orders the following modifications:

- a. Map B.7.4-1 to UHOPA 17 is modified to change the designation of a portion of 549367's lands from "Institutional" to "Medium Density Residential" and remove those lands from Area Specific Policy – Area C. The map changes as noted are reflected in the Land Use Plan Map B.7.4.1 which was appended to Ms. Mahood's affidavit as Exhibit "1". For ease of reference, that map is attached to this decision and marked as Attachment 1; and

b. The text of UHOPA 17 is modified to reflect the above-noted designation change as follows:

- i. Section 7.4.18.3 shall be modified by changing the reference of two elementary schools to one elementary school; and
- ii. Section 7.4.18.3(b) shall be modified by deleting the reference to the Hamilton Wentworth District Catholic School Board; and finally,
- iii. Section 7.4.18.3(f) shall be modified by removing the plural reference to schools and referring to school in the singular.

Contested Motion:

[9] Now I come to the decision on the contested Motion described earlier in this decision. The City's Motion is granted. Below are my reasons and analysis for this decision.

[10] I should also indicate that during the TCC assigned to hear the Settlement Motion as discussed above, Mr. Gosnell, counsel for the Respondents on this Contested Motion sought to have the Contested Motion re-opened as in his view, some additional information provided to him by the City following the hearing of the Motion in January, would result in a change in his earlier position.

[11] That assertion was disputed by counsel for the City, Mr. Kovecevic. Mr. Kovecevic explained that firstly, the materials given to Mr. Gosnell were to have been treated on a "without prejudice" basis and secondly, despite Mr. Gosnell's advice to the Tribunal, the City's position on the earlier Motion had not changed. The City resisted the re-opening of that earlier Motion.

[12] Following hearing reply submissions from Mr. Gosnell, I determined that I would not re-open the Motion. A decision would follow based on the evidence and submissions heard in January 2018.

[13] At the heart of the dispute between Respondents and the City is whether or not the appeals launched include a parcel of land referred to as "Blocks 1 and 2" and whether or not those Blocks are to be included in the terms "adjacent lands."

[14] I heard from Mr. Mathew Johnston, who was qualified and accepted as an expert

in land use planning. He testified that a broad definition should be accepted for the term "adjacent lands" and that the limits of the natural heritage features have an impact on certain properties, including those of his clients. He opined that any land holdings impacted by natural heritage features should be included into the appeal.

[15] Under cross-examination by Ms. Wice, counsel to the City, Mr. Johnston indicated that the terms "adjacent" and "abutting" were identical in their application.

[16] However, when one looks to the map which identifies the specific land holdings of each of the remaining appellants (Exhibit 1, Tab 2(D)), it is clear that lands adjacent to or abutting those land holdings do not comprise of the entirety of Blocks 1 and 2.

[17] That map shows three of the appellants' land holdings are contained in one Block while the remaining fourth is located in the second Block. Just because the appellants have chosen to label themselves as "Blocks 1 and 2" appellants does not mean their respective appeals are to cover the entirety of those large Blocks of land.

[18] An argument forwarded by the Respondents was that once information on the Block Servicing Strategy ("BSS") was provided by the City, only then could the Respondents refine their appeals to identify which parcels should be included and which should not or in other words, set out clearly what adjacent lands should be included in the appeals.

[19] There are a few problems with this approach. First, Mr. Johnston acknowledged that "adjacent" and "abutting" can be used interchangeably. I agree with his conclusion. Both terms suggest parcels are "next to" or "adjoining" or "neighbouring" or "contiguous" in some way. When one views the map, there are numerous parcels of land within both Blocks that simply do not fit with this description.

[20] So on the plain and simple assessment of whether all the lands within Blocks 1 and 2 constitute "adjacent lands," I determine that they do not.

[21] The other approach is to remedy the problem that is created when appeals go beyond the interests of the appellants to landholdings of others.

[22] In Mr. Michael Crough's affidavit, a professional land use Planner retained by the Respondents, which affidavit was filed as Exhibit 3 Tab 2, he opined that "the extent of adjacent lands cannot be reasonably determined at this time." [see paragraph 22]. He states at paragraph 17:

In my opinion, before the Block 1 Landowners can scope their appeals to a narrower geographical area, they must be able to access the same documents that the City has in its possession regarding the natural heritage features on Blocks 1 and 2 of the BSS. Without this information, the Block 1 Landowners would be at a disadvantage as they do not know the extent of lands that they need to hold back from appeal to ensure that they are able to fairly challenge the location, delineation or existence of the natural heritage feature(s) on their lands. [underlined emphasis added by the Tribunal]

[23] Mr. Johnston echoed this same approach during his testimony.

[24] The problem with this approach is that the focus seems to be on the geography and not on the policies which affect the specific land holdings. Clearly the issue of natural heritage features on the Appellants' lands is front and centre. That issue can be maintained for the hearing proper.

[25] Mr. Crough's affidavit sets out the specific policies which are at issue for the various appellants [see paragraph 21] but seeks to have those policies held under appeal not only for the appellants' lands but also for the adjacent lands, again which are not determined.

[26] It is unreasonable to stall the enforcement of a planning instrument on lands which neither fit the description of "adjacent" nor form part of the Appellants' land-holdings.

[27] For the foregoing reasons, the City's Motion is granted and further partial approval of UHOPA 17 is granted. Specifically, the Tribunal orders that the FWSP is approved in its entirety, except those lands subject to the site specific appeals as set out in the City's Amended Notice of Motion, filed as Exhibit 2, at Tab 1, paragraph 1.

"J.V. Zuidema"

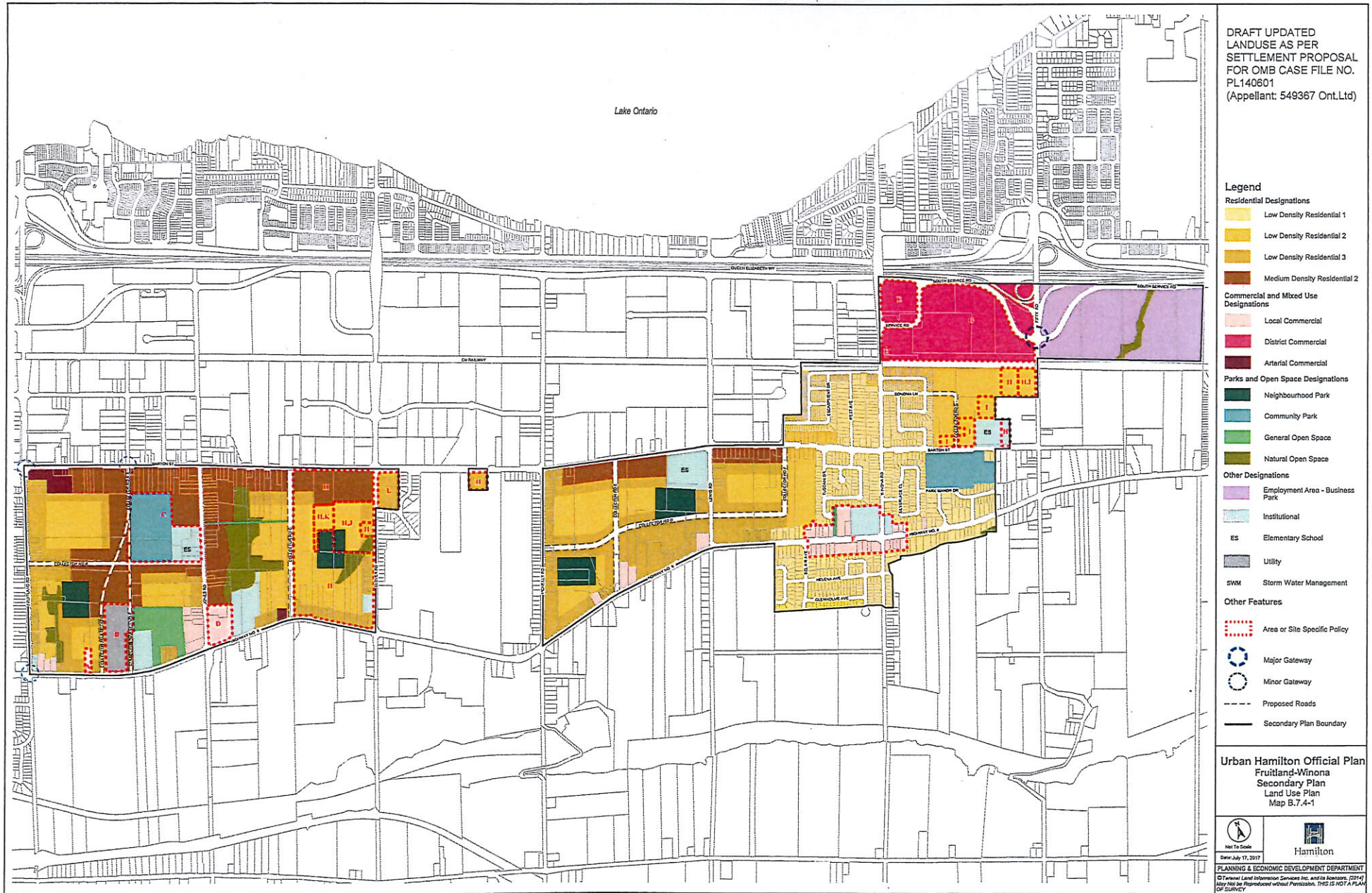
J.V. ZUIDEMA
VICE-CHAIR

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please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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ONTARIO MUNICIPAL BOARD

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

Appellants: Petar Djeneralovic; 2261305 Ontario Inc.; Ray Bucci, 783878 Ontario Ltd. cob Bucci Homes; Nick & Anna DeFilippis; 549367 Ontario Limited
Subject: Proposed Official Plan Amendment No. 17 UHOP
Municipality: City of Hamilton
OMB Case No.: PL140601
OMB File No.: PL140601

AMENDED NOTICE OF MOTION -
City of Hamilton
(Seeking order for partial approval and deeming parts in force)

City of Hamilton ("City") will make a Motion to the Ontario Municipal Board at 10:00 a.m., on January 5, 2018 at Dundas Town Hall, OMB Hearing Room (2nd Floor Auditorium), 60 Main Street, Dundas, ON, L9H 1C6.

RELIEF REQUESTED:

1. An order declaring that the Fruitland Winona Secondary Plan ("FWSP") is approved in its entirety, except those lands subject to the following site specific appeals:

Appellant	Address	Legal Description
Petar Djeneralovic	1. 238 Jones Road, Stoney Creek	1. Part Lot 12, Concession 2 Saltfleet – 17358-0021(LT)
	2. 252 Jones Road, Stoney Creek	2. Part Lot 12, Concession 2 Saltfleet, being Part 1 on 62R12634 – 17358-0021(LT)
	<u>3. 820/822 Barton Street East (Owner: Valery Homes Stoney Creek Limited)</u>	<u>3. Part Lot 12, Concession 2 Saltfleet, Being Part 1 on 62R20175 and Parts 1 & 2 on 62R20153 - 17358-0115 (LT)</u>
2261305 Ontario Inc.	212 Fruitland Road., Stoney Creek	Part Lot 14, Concession 2 Saltfleet – 17354-0060(LT)
Ray Bucci, 783878 Ontario Ltd.	1. 228 McNeilly Road, Stoney	1. Part Lot 8, Concession 2

cob Bucci Homes	Creek	Saltfleet, save and except Parts 1 and 2 on 62R13158 – 17364-0067(LT)
	2. 244 McNeilly Road, Stoney Creek	2. Part Lot 8, Concession 2 Saltfleet, being Part 1 on 62R13158 – 17364-0068(LT)
	3. 1069 Highway No. 8, Stoney Creek	3. Part Lot 8, Concession 2 Saltfleet – 17364-0051(LT)
Nick & Anna DeFilippis	667 Hwy No. 8, Stoney Creek	Part Lot 14, Concession 2 Saltfleet – 17354-0079(LT)

2. An order declaring approval of the FWSP policies and schedules, as they apply to the identified properties under site specific appeal, except for the following policies and schedules which remain under appeal:

Appellant	Address	FWSP Policies and Schedules Under Appeal
Petar Djeneralovic	238/252 Jones Road, Stoney Creek; <u>820/822 Barton Street East (Owner: Valery Homes Stoney Creek Limited)</u>	7.4.4 Residential Designations 7.4.4.1 7.4.4.2 General Residential Policies 7.4.4.6 Medium Density Residential 2 Designation 7.4.7.5 Natural Open Space Designation 7.4.11 Natural Heritage System - General Policies 7.4.11.1 through 7.4.11.4 Schedule B.7.4-1 Land Use Plan Schedule B.7.4-2 Natural Heritage System Schedule B.7.4-3 Transportation Classification Plan Schedule B.7.4-4 Block Servicing Strategy Area Delineation
2261305 Ontario Inc.	212 Fruitland Road., Stoney Creek	7.4.4 Residential Designations 7.4.4.1 7.4.4.2 General Residential Policies 7.4.4.4 Low Density Residential 2 Designation 7.4.4.5 Low Density Residential 3 Designation 7.4.7.5 Natural Open Space Designation 7.4.11 Natural Heritage System - General Policies 7.4.11.1 through 7.4.11.4 Schedule B.7.4-1 Land Use Plan Schedule B.7.4-2 Natural Heritage System

		Schedule B.7.4-3 Transportation Classification Plan Schedule B.7.4-4 Block Servicing Strategy Area Delineation
Ray Bucci, 783878 Ontario Ltd. cob Bucci Homes	228 McNeilly Road, 244 McNeilly Road and 1069 Highway No. 8, Stoney Creek	<u>7.4.2.4 Open Space and Parks</u> 7.4.4 Residential Designations 7.4.4.1 7.4.4.2 General Residential Policies 7.4.4.4 Low Density Residential 2 Designation 7.4.4.5 Low Density Residential 3 Designation 7.4.7 Parks and Open Space Designations 7.4.7.2 Neighbourhood Park Designation Schedule B.7.4-1 Land Use Plan Schedule B.7.4-2 Natural Heritage System Schedule B.7.4-3 Transportation Classification Plan Schedule B.7.4-4 Block Servicing Strategy Area Delineation
Nick & Anna DeFilippis	667 Hwy No. 8, Stoney Creek	7.4.4 Residential Designations 7.4.4.1 7.4.4.2 General Residential Policies 7.4.4.5 Low Density Residential 3 Designation 7.4.7.5 Natural Open Space Designation 7.4.11 Natural Heritage System - General Policies 7.4.11.1 through 7.4.11.4 Schedule B.7.4-1 Land Use Plan Schedule B.7.4-2 Natural Heritage System Schedule B.7.4-3 Transportation Classification Plan Schedule B.7.4-4 Block Servicing Strategy Area Delineation

3. Such further and other relief that Counsel may request and the Board may order.

THE GROUNDS FOR THE MOTION ARE:

4. On May 14, 2014, the City adopted the FWSP. Eighteen (18) appeals were filed. All appeals, but for the following, have been settled, dismissed or withdrawn:

Petar Djeneralovic;

2261305 Ontario Inc.;

From: Norris, John H. (MAG) [<mailto:John.Norris2@ontario.ca>]
Sent: June-28-18 4:10 PM
To: Kovacevic, Michael
Cc: Mahood, Alissa; Newbold, Christine; Wice, Joanna; Sergi, Tony; Robichaud, Steve
Subject: RE: PL140601 : Decision Issued : Proposed Official Plan Amendment No. 17 UHOP

Dear Parties,

Further to the query from Mr. Kovacevic, please be advised that Ms. Zuidema has confirmed that the relief to paragraph 2 was also granted.

Thanks,

John H. Norris

John H. Norris, Planner – Case Coordinator
Local Planning Appeal Tribunal/Environment and Land Tribunals Ontario
Email: John.Norris2@ontario.ca
Tel: (416) 326-6798
Fax: (416) 326-5370

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From: Kovacevic, Michael [<mailto:Michael.Kovacevic@hamilton.ca>]
Sent: June-22-18 1:38 PM
To: Chew, Joyce (MAG)
Subject: RE: PL140601 : Decision Issued : Proposed Official Plan Amendment No. 17 UHOP

Ms. Chew:

I have reviewed Ms. Zuidema's decision and would request a clarification. The decision indicated the City's motion is granted and then specifically orders that the FWSP is approved in its entirety, except those lands subject to the site specific appeals as set out in the City's Amended Notice of Motion, filed as Exhibit 2, at Tab 1, paragraph 1. However, the motion also asked that the FWSP be declared in force for the lands subject to the site specific appeals except for the policies listed in Exhibit 2, tab 1 paragraph 2. Can you ask Vice Chair Zuidema whether the relief in paragraph 2 was also granted.

Thank-you,

Michael G. Kovacevic
Solicitor
City of Hamilton
(905) 546-2424 ext. 4641

MOVE NOTIFICATION: Effective Monday, July 9, 2018, Legal and Risk Management Services will be located at 50 Main St. East, Hamilton, ON L8N 1E9. Thank you for your cooperation.

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From: Chew, Joyce (MAG) [<mailto:Joyce.Chew@ontario.ca>]

Sent: June-22-18 11:39 AM

To: Wice, Joanna; Kovacevic, Michael; SGosnell@blg.com; itang@blg.com; mconnell@weirfoulds.com; dbaker@weirfoulds.com; rkehar@woodbull.ca; mbull@woodbull.ca; Victor.fontana@icloud.com; nsmith@tmalaw.ca; rwood@blg.com; mluong@blqcanada.com; Egeh, Hodan (MMA/MHO); elvia@demarchihomes.ca

Cc: JUS-G-MAG-ELTO-CLO

Subject: PL140601 : Decision Issued : Proposed Official Plan Amendment No. 17 UHOP

To all recipients:

Attached is a decision issued today with respect to the above noted file.

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- By telephoning: Toronto: 416-212-6349 Toll Free: 1-866-448-2248
- TTY: 1-800-855-1155 via Bell relay

Thank you.

Joyce Chew
Decisions Unit
Environment and Land Tribunals Ontario
Telephone: 416-326-6797
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