

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

14-120-OMB-01



ISSUE DATE: June 30, 2015

CASE NO(S):

PL140601

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

Appellant: 549367 Ontario Limited
Appellant: 783878 Ontario Limited
Appellant: 820 Barton St. Inc.
Appellant: Elsie and Jim Chappel; 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: Chappel v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 17(45) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Motion Request By: City of Hamilton
Purpose of Motion: Request for an Order Dismissing the Appeals
Appellant: 2261305 Ontario Inc.
549367 Ontario Ltd.
Elsie Chappel and Jim Chappel
Gino Dal Bello and Olindo Dal Bello
Anna DeFilippis and Nick DeFilippis
Cal DiFalco and Teresa DiFalco
Cristina Di Saverio and Filippo Di Saverio
Christopher Douglas
Marion Fazackerley-Walford and Wally Walford
Gisele Rottaris and Vic Rottaris
Alberto Volpini and Nicoletta volpini
Correena Walford
Marion Walford-Fazackerley
Clarence Walford-Fazackerley
Subject: Proposed Official Plan Amendment No. 17
Municipality: City of Hamilton
OMB Case No.: PL140601
OMB File No.: PL140601

Heard: June 8 and 9, 2015 in Hamilton, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel/Representative*</u>
City of Hamilton	Michal Minkowski, and Michael Kovacevic
2261305 Ontario Inc.; Gina Dal Bello; Olindo Dal Bello; Peter Djeneralovic; Anna DeFilippis; Nick DeFilippis	Manfred Rudolph
549367 Ontario Ltd.	Dennis Trinaistich
820 Barton Street Inc.	Anna Toumanians*
783878 Ontario Ltd. (Bucci Homes) and Penady (Stoney Creek) Ltd.	Denise Baker
1312733 Ontario Inc.; Branthaven Fruitland Inc.; Branthaven Winona Hills Inc.	Nancy Smith
2294643 Ontario Inc. (Movengo)	Mary Bull
Horizon Utilities Corporation	Robert Wood
Elsie and Jim Chappel, Grant Cook, Cal DiFalco, Teresa DiFalco, Cristina Di Saverio, Filippo Di Saverio, Marion Fazackerley-Walford, Wally Walford, Gisele Rottaris, Vic Rottaris, Alberto Volpini, Nicoletta Volpini, Correena Walford, Marion and Clarence Walford-Fazackerley, and Christopher Douglas	Virginia MacLean

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON AND ORDER
OF THE BOARD**

BACKGROUND

[1] This is the second pre-hearing conference on the matter of a number of appeals against the Fruitland-Winona Secondary Plan, which is also known as Amendment No. 17 (“UHOPA 17”) to the Urban Hamilton Official Plan (“UHOP”).

[2] Upon the approval of UHOPA 17, the lands identified will be incorporated into the urban area of Hamilton and will be subject to the policies of the UHOP. The effect of UHOPA 17 is to amend various policies of the UHOP to reflect the principles, policies, land use designations and land use categories in UHOPA 17 and to establish a policy framework to guide development and re-development of lands within the Fruitland-Winona planning area.

MATTERS BEFORE THE BOARD

[3] Several matters were before the Board for this second pre-hearing conference, including:

1. Motions for Party Status.
2. The partial approval of two applications for site-specific amendments to the UHOP by Penady (Stoney Creek) Ltd. and 2294643 Ontario Inc.
3. The City’s motion for dismissal without a hearing of the appeals of those appellants represented by Ms. McLean. Submission of draft consolidated issues list with proposed Groupings of the issues – comment – no idea what a Grouping of the issues is.
4. Upcoming hearing events scheduled for 2015.
5. Upcoming hearing event scheduled for 2016.

MOTION TO DISMISS THE APPEALS OF ELSIE AND JIM CHAPPEL ET AL WITHOUT A HEARING

Position of the Appellants

[4] Ms. MacLean, advised that her clients' have filed a request for review (pursuant to s 43 of the OMBA) of this Member's earlier decision to dismiss appeals without a hearing at the last prehearing conference. That request is before the Chair and remains under consideration. She asked the Board to defer hearing the City's motion to dismiss appeals of her clients' until the outstanding request for review is decided..

Position of the City of Hamilton

[5] Michael Minkowski, counsel for the City contended first that the request for an OMBA s. 43 review filed by Ms. McLean's clients' Elsie and Jim Chappel et al would not be impacted in any way by the City's Motion. He also contended that Ms. MacLean failed to file a Notice of Response to the City's Motion within the required 10-day time period and that pursuant to Rule 63 of the Board's *Rules of Practice and Procedure* ("Rules"), the Board should not accept her request to adjourn.

Decision

[6] After consideration of the submissions of counsel, the Board finds that consideration of the City's Motion to Dismiss should be adjourned until the Chair has disposed of the request. It is the view of this Board that this approach represents the most efficient use of this Board's time. The next prehearing conference of this Board is set in August and this Board has other procedural matters that can be disposed of at this prehearing conference, to facilitate the resolution of other appeals to OPA 17. The Board recognizes that a s 43 request does not act as a stay or adjournment of a proceeding. This principle is not undermined by this deferral, given this is only a brief adjournment to the City's motion and there may be an interrelationship between the appeals the City seeks to dismiss in the current motion and the subject matter of the

request The Board expects the City's Motion will be heard on August 13, 2015. The Board directs that the City is under no obligation to submit further Motion documentation beyond those documents submitted before June 5, 2015. One of those documents was identified as "Motion Record re: appeal by Cal and Teresa DiFalco". The others are similarly identified with the name of an Appellant.

[7] Notices of Response from the Appellants will be submitted in a timely manner according to the Board's Rules.

MOTIONS FOR PARTY STATUS

[8] The Motions for Party status by the following were not opposed:

- Penady (Stoney Creek) Ltd.
- 1312733 Ontario Inc.
- Branthaven Fruitland Inc.
- Branthaven Winona Hills Inc.
- 2294643 Ontario Inc. (Movengo)
- Horizon Utilities Corporation.

APPEALS HEARD

[9] The appeal of 2294643 Ontario Inc. to amend the UHOP as it pertains to its 3.6 hectares ("ha") of lands, municipally known as 1290 South Service Road, which are located south of South Service Road/Queen Elizabeth Way and east of Winona Road, in order to bring UHOPA No. 17 into effect as it pertains to its lands, was not opposed.

[10] The Board accepted the uncontested and unopposed affidavit evidence of John Ariens, which was entered in evidence as Exhibit 2M2, and finds that the proposed amendment to the UHOP conforms to the provisions of the Growth Plan for the Greater Golden Horseshoe, as well as to the policies of the UHOP and represents good planning.

[11] Further, the appeal of Penady (Stoney Creek) Ltd. to amend the UHOP as it pertains to its 17.51 ha municipally known as 1310 South Service Road and located south of the South Service Road/Queen Elizabeth Way and west of Fifty Road, in order to bring UHOPA 17 into effect as it pertains to its lands, was not opposed.

[12] The Board accepted the uncontested and unopposed affidavit evidence of David A. McKay, which was entered in the evidence as Exhibit 2M4, Tab 4A, and finds that the proposed amendment to the UHOP conforms to the provisions of the Growth Plan for the Greater Golden Horseshoe, as well as to the policies of the UHOP and represents good planning.

ORDER

[13] The Board orders that the Motion for Party Status of Horizon Utilities Corporation is allowed.

[14] The Board orders that the Motions for Party Status by 1312733 Ontario Inc.; Branthaven Fruitland Inc.; and Branthaven Winona Hills Inc. are allowed.

[15] The Board orders that the Motion for Party Status by 2294643 Ontario Inc. (Movengo) is allowed.

[16] The Board orders that the appeal of 2294643 Ontario Inc. (Movengo) is allowed and partial approval of UHOPA No. 17 is given. The sections of UHOPA No. 17 that are approved by this Order are listed in Exhibit 2M2, Tab 2, pages 14-16.

[17] The Board orders that the Motion for Party Status by Penady (Stoney Creek) Ltd. is allowed.

[18] The Board orders that the appeal of Penady (Stoney Creek) Ltd. is allowed and partial approval of UHOPA No. 17 is given. The sections of UHOPA No. 17 that are approved by this Order are listed in Exhibit 2M4, Tab 3, pages 13 and 14.

FUTURE EVENTS

[19] A third pre-hearing will be held **on Thursday and Friday, August 13 and 14, 2015 commencing at 10 a.m. at:**

**Dundas Town Hall
2nd Fl. Auditorium / OMB Room
60 Main Street E. Dundas
Hamilton, ON L9H 2P8**

- At this pre-hearing, the City's Motion for Dismissal without a hearing of the appeals of Elsie and Jim Chappel et al will be heard
- Any unresolved issues after negotiations between the City and 549367 Ontario Ltd. cease, will be litigated
- A draft final consolidated list of the issues to be litigated at Phase I of the hearing will be considered
- If required at this time a fourth pre-hearing conference may be scheduled for January 2016.

[20] Phase I of the hearing is scheduled for **four weeks beginning Tuesday, November 3, 2015 commencing at 10 a.m. at:**

**Dundas Town Hall
2nd Fl. Auditorium / OMB Room**

**60 Main Street E. Dundas
Hamilton, ON L9H 2P8**

The issues have been organized into 14 groups, five of which will be litigated in this first Phase:

- Group 1, which includes natural heritage issues, will begin November 3, 2015. (The natural heritage issues in the appeals of Peter Djeneralovic and 820 Barton Street Inc. will not be considered until their judicial proceedings into the removal of trees have concluded).
- Group 2, which includes community parks and schools issues, will commence November 16, 2015.
- Groups 3, 4 and 5, which include issues concerning building height and density as well as neighbourhood parks, will begin November 9, 2015.

[21] Phase II of the hearing is scheduled for seven days beginning **Monday March 7, 2016 commencing at 10 a.m. at:**

**Dundas Town Hall
2nd Fl. Auditorium / OMB Room
60 Main Street E. Dundas
Hamilton, ON L9H 2P8**

The remaining issues will be litigated in this Phase II. These include Pedestrian Promenade/Right of Way (Group 6) and Farming (Group 9).

[22] On consent of the Parties, Issue 10, dealing with the "District Commercial" designation of the lands generally located south of the QEW and west of Fifty Road, has been deleted.

[23] Depending on the outcome of the OMBA s. 43 review and the Motion to Dismiss (without a hearing) a portion of the appeals of Elsie and Jim Chappel et al, the issues listed in Groups 11 – 14 (Exhibit 2M6) as well as the issues raised by Elsie and Jim

Chappel et al in the February 3, 2014 pre-hearing may be scheduled for litigation in either Phase I or Phase II.

"C. Hefferon"

C. HEFFERON
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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EXHIBIT 2M2, TAB 2, PAGES 14-16

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

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

Appellant:	549367 Ontario Limited
Appellant:	783878 Ontario Limited
Appellant:	820 Barton St. Inc.
Appellant:	Sharon Restivo and others
Subject:	Proposed Official Plan Amendment No. 17 UHOP
Legislative Authority:	Subsection 17(24) of the <i>Planning Act</i> , R.S.O. 1990, C. P. 13, as amended
Municipality:	City of Hamilton
OMB Case No.:	PL140601
OMB File No.:	PL140601

NOTICE OF MOTION
2294643 ONTARIO INC. ("MOVENGO")
(Partial Approval)

2294643 Ontario Inc. ("Movengo") will bring a motion to the Ontario Municipal Board (the "Board") at the Prehearing Conference scheduled to commence on Monday, 8 June 2015 at 10:00 a.m., at the Dundas Municipal Centre, Council Chambers, 60 Main Street East, Dundas, or at such later time as the Board may direct.

THE MOTION IS FOR:

*START

1. An Order granting approval of the following section of the Fruitland-Winona Secondary Plan, as those sections apply to the lands owned by Movengo located at southeast corner of Winona Road and South Service Road /Queen Elizabeth Way (the "Movengo Lands"):

(a) **4.1 Text Changes**

(i) 4.1.1 Volume 2 (a), in regard to:

A. 7.4.2.8 Commercial (in its entirety);

- 2 -

- B. 7.4.2.9 Urban Design (in its entirety);
 - C. 7.4.2.10 Utility and Municipal Services (in its entirety);
 - D. 7.4.3 General Policies (introductory language and (a) & (d));
 - E. 7.4.5 (introductory language in its entirety);
 - F. 7.4.5.1 (in its entirety);
 - G. 7.4.5.2 General Commercial Policies (in its entirety);
 - H. 7.4.5.4 District Commercial Designation (in its entirety);
 - I. 7.4.10 Urban Design (introductory language and (a));
 - J. 7.4.10.7 Public Utilities and Communications (in its entirety);
 - K. 7.4.10.8 (in its entirety);
 - L. 7.4.15 Lake-Based Municipal Water and Waste Water Systems (in its entirety);
 - M. 7.4.16 Storm Water Management (in its entirety)
 - N. 7.4.17 (introductory language in its entirety);
 - O. 7.4.17.11 General Policies Implementation – Cost Sharing (in its entirety);
 - P. 7.4.17.12 (in its entirety); and,
 - Q. 7.4.18.5 Area-Specific Policy – Area E (in its entirety); and
- (ii) 4.1.2 Volume 3 (deleting Policy USC-3)
- (b) 4.2 Schedule/Appendix/Map Changes**
- (i) 4.2.2 Volume 2, in regard to:

- 3 -

- A. Paragraph b, that Map B-7.4-1 – Fruitland-Winona Secondary Plan – Land Use Plan be adopted
- (ii) 4.2.3 Volume 3, in regard to:
 - A. Paragraph b, that Map SC-2 – Area Specific Policies be deleted

**END*
 (the above-listed sections are collectively referred to as the “Relevant Sections” in this Notice).

2. In the event that the Board grants the partial approval requested above, an Order maintaining Movengo as a party to these proceedings for the purpose of receiving all materials distributed in this proceeding, in order that Movengo may monitor the hearing and make representations in any hearing event or with respect to any settlement that may affect the Movengo Lands.
3. Such further and other relief as counsel may request and the Board may permit.

THE GROUNDS FOR THE MOTION ARE:

The Movengo Lands and Zoning Application

4. Movengo is the owner of lands located at the southeast corner of Winona Road and South Service Road /Queen Elizabeth Way, municipally known as 1290 South Service Road, in the City of Hamilton (the “Movengo Lands”). The Movengo Lands are currently vacant.
5. On 11 November 2014, Movengo submitted an application to rezone the Movengo Lands from *Agriculture Specialty (AS)* to *Community Shopping Centre (SC2)* to permit the development of the lands for a variety of commercial uses (the “Zoning Application”). City staff have deemed the Zoning Application complete and the processing of the Zoning Application has commenced.

RELIEF REQUESTED:

1.
*START

In the event that the Board orders the relief requested at paragraph 1 of Movengo's Notice of Motion for partial approval, or any portion thereof, an Order of the Board granting approval of the following sections of the Fruitland-Winona Secondary Plan, as those sections apply to the lands located at the southwest quadrant of the Queen Elizabeth Way and Fifty Road in the City of Hamilton (the "City") and municipally addressed as 1310 South Service Road, 400 Winona Road and 395 Fifty Road (the "Penady Lands"):

Text Changes (Section 4.1)

(1) Section 4.1.1 Volume (a), in regard to:

- 7.4.2.8 Commercial (in its entirety);
- 7.4.2.9 Urban Design (in its entirety);
- 7.4.2.10 Utility and Municipal Services (in its entirety);
- 7.4.3 General Policies (introductory language and (a) & (d));
- 7.4.5 (introductory language in its entirety),
- 7.4.5.1 (in its entirety),
- 7.4.5.2 General Commercial Policies (in its entirety);
- 7.4.5.4 District Commercial Designation (in its entirety);
- 7.4.10 Urban Design (introductory language and (a));
- 7.4.10.7 Public Utilities and Communications (in its entirety);
- 7.4.10.8 (in its entirety);
- 7.4.10.10 (in its entirety);
- 7.4.10.11 (introductory language and (b));
- 7.4.10.13 (in its entirety);
- 7.4.13.15 Inter-Regional Transit Network (in its entirety);
- 7.4.15 Lake-based Municipal Water and Waste Water Systems (in its entirety);
- 7.4.16 Storm Water Management (in its entirety)
- 7.4.17 (introductory language in its entirety)
- 7.4.17.11 General Policies Implementation- Cost Sharing (in its entirety);
- 7.4.17.12 (in its entirety);
- 7.4.18.5 Area-Specific Policy - Area G (in its entirety);

(2) Section 4.1.2 Volume 3 (deleting Policy USC-3)

(3) Section 4.2.2 Volume 2 (Schedule/Appendix/Map Changes) in regard to:

Paragraph b, that Map B-7.4-1 - Fruitland-Winona Secondary Plan - Land Use Plan be adopted;

Paragraph d, that Map B.7.4-3 - Fruitland-Winona Secondary Plan - Transportation Classification Plan be adopted;

(4) Section 4.2.3 Volume 3 (Schedule/Appendix/Map Changes) in regard to:

Paragraph b, that Map SC-2 – Area Specific Policies be deleted.

*END

2. Such further and other relief as counsel may advise and the Board may permit.

THE GROUNDS IN RESPONSE TO THE MOTION ARE:

Description of the Penady Lands & Planning History

3. The Penady Lands are approximately 17.51 hectares (43.27 acres) in size. The majority of the Penady Lands are vacant, with the exception of the northeast portion of the site which contains buildings associated with former uses on the property (a gas station, motel and associated restaurant, etc). The Penady Lands are bounded by South Service Road and the Queen Elizabeth Way to the north; South Service Road and Winona Road to the west; a CNR railway right-of-way to the south; and Fifty Road to the east. Existing residential uses (with industrial uses beyond) are located to the west of Winona Road. Future commercial development lands are located to the northwest between South Service Road, Winona Road and Service Road (the "Movengo Lands"). Existing residential uses are also located north of the Queen Elizabeth Way and south of the CNR railway right-of-way. Future residential development lands are also located south of the CNR railway right-of-way to the south east of the Penady Lands. Future employment development lands are located east of Fifty Road.
4. An extensive planning process has been undertaken for the Penady Lands starting in 2004 and culminated in a commercial development proposal being approved through Official Plan Amendment 36 to the former Region of Hamilton Wentworth Official Plan ("ROPA 36") and Official Plan Amendment 150 to the former City of Stoney Creek Official Plan ("OPA 150") and Zoning By-law Amendment 09-184 to the former City of Stoney Creek Zoning By-law 3692-92 in 2010 ("ZBL 09-184"). In December 2013, the City of Hamilton approved Zoning By-law Amendment 13-312 to the former City of Stoney Creek Zoning By-law 3692-92 (ZBL 3692-92") in order to clarify the zoning permissions for the Penady Lands. These approvals permit the Penady Lands to be developed for 41,200 sq. m. of retail floor space anchored by a department store and a warehouse membership club.