

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

14-120-OMB-02



ISSUE DATE: August 13, 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

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

AMENDING DECISION DELIVERED BY C. HEFFERON

[1] In accordance with Rule 108 of the *Board's Rules of Practice and Procedure*, whereby the Board may at any time and without prior notice to the parties correct a technical or typographical error made in a decision or order, the Memorandum of Oral Decision and Order ("Decision") issued on June 30, 2015, is hereby amended as follows:

[2] By deleting paragraph [3], items 2 and 3 from the Decision and replacing them with the following:

[3] 2. Motions for partial approval 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.

[3] By deleting paragraph [9] from the Decision and replacing it with the following:

[9] The Motion for partial approval by 2294643 Ontario Inc. to approve 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.

[4] By deleting paragraph [11] from the Decision and replacing it with the following:

[11] Further, the Motion for partial approval by Penady (Stoney Creek) Ltd. to approve 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.

[5] By deleting paragraph [16] from the Decision and replacing it with the following:

[16] The Board orders that the Motion for partial approval by 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.

[6] By deleting paragraph [18] from the Decision and replacing it with the following:

[18] The Board orders that the Motion for partial approval by 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.

[7] In all other respects the Board's decision remains the same.

"C. Hefferon"

C. HEFFERON
MEMBER

If there is an attachment referred to in this document,
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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.