

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



15-303-OMB-01 Attachment 1
15-304-OMB-01 Attachment 2

ISSUE DATE: September 25, 2015

CASE NO(S): PL130701
PL141020

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Nebo Group (2006) Inc.
Subject: Request to amend the Official Plan - Failure City of Hamilton to adopt the requested amendment Urban Areas – Business Parks
Existing Designation: Urban Areas – Business Parks SPA No.
Proposed Designation: To recognize a hazardous waste transfer
Purpose: 899 Nebo Road
Property Address/Description: City of Hamilton
Municipality: ROPA-12-001
Approval Authority File No.: PL130701
OMB Case No.: PL130701
OMB File No.: PL130701
OMB Case Name: Nebo Group (2006) Inc. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Nebo Group (2006) Inc.
Subject: Application to amend Zoning By-law No. 05-200 – Refusal or neglect of City of Hamilton to make a decision
Existing Zoning: Prestige Business Park 'M3-354' Zone
Proposed Zoning: Prestige Business Park 'M3- (To be determined) ' Zone
Purpose: To recognize a hazardous waste transfer
Property Address/Description: 899 Nebo Road
Municipality: City of Hamilton
Municipal File No.: ZAR-12-071
OMB Case No.: PL130701
OMB File No.: PL130702

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Nebo Group (2006) Inc.
Subject:	Request to amend the Official Plan - Failure of City of Hamilton to adopt the requested amendment
Existing Designation:	Employment area - Business Park
Proposed Designation:	Site Specific to be determined
Purpose:	To permit the additional waste stream of "Hazardous Waste" for the existing Waste Transfer Facility
Property Address/Description:	899 Nebo Road
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-14-003
OMB Case No.:	PL141020
OMB File No.:	PL141020

Heard: August 19, 2015 in Hamilton, Ontario

APPEARANCES:

Parties

Lockwood Auto Group Inc. (formerly Nebo Group (2006) Inc.)

City of Hamilton

Maple Leaf Food Inc. and Canada Bread Company Limited

Counsel

R. D. Cheeseman

B. Duxbury

M. Bowman

MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER ON AUGUST 19, 2015 AND ORDER OF THE BOARD

[1] Lockwood Auto Group Inc. ("Lockwood") is the former Nebo Group (2006) Inc. ("Nebo"). Earlier decisions by the Board referred to Nebo. This decision uses the current

name, Lockwood, to refer to the earlier actions of Nebo and to the current actions of Lockwood.

[2] Lockwood currently has a waste transfer facility and a waste processing facility at 899 Nebo Road in the City of Hamilton (“City”). Lockwood wishes to expand its operation to include a hazardous waste transfer facility that does not include a hazardous waste processing facility.

[3] Lockwood applied for a site-specific official plan amendment (“OPA”) and associated site-specific zoning by-law amendment (“ZBLA”) to permit the proposed new use. Lockwood has appealed both of these matters to this Board pursuant to s. 22(7) and s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13 (“Act”). This is case PL130701.

[4] The City now has a new Urban Hamilton Official Plan (“UHOP”) that is in effect for the Lockwood lands. Lockwood has applied for a site-specific UHOP amendment (“UHOPA”) to permit the hazardous waste transfer facility. Pursuant to s. 22(7) of the Act, Lockwood has appealed this matter to this Board. This is case PL141020.

[5] At a pre-hearing in September 2014 for case PL130701, all parties indicated their wish to have these two matters consolidated with the hearing of the UHOPA. The UHOPA appeal had not yet reached the Board by the time of this pre-hearing so the question of consolidation was stood down to a later date.

[6] In January 2015, a pre-hearing for case PL141020 was held. No new interests appeared and no new parties were added to this matter. As a result, the parties to the OPA and ZBLA appeals are the same as those to the UHOPA appeal.

[7] The parties renewed their request for consolidation which was granted by the Board.

[8] At this appearance, scheduled for both PL130701 and PL141020, the Board

confirmed the consolidation of these matters.

[9] The City, Maple Leaf Food Inc. (“Maple Leaf”), Canada Bread Company Limited (“Canada Bread”) appeared at the pre-hearings in opposition to the proposed addition of a hazardous waste stream to the existing waste transfer facility.

[10] The parties have now reached a settlement.

[11] The OPA is no longer required since the UHOP is now in effect for the Lockwood site. The Board dismisses the appeal of the OPA.

[12] The Board heard from Matthew Johnston, a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. Mr. Johnston executed the Board’s Acknowledgement of Expert’s Duty form. The Board qualified Mr. Johnston to provide the Board with independent expert land use opinion evidence in these proceedings.

[13] The Lockwood site is within the former Township of Glanbrook, specifically in the former North Glanbrook Business Park. The part of the North Glanbrook Business Park in which the Lockwood site is located is now known as the Red Hill Business Park South (“Business Park”).

[14] The Business Park is a large area designed for a variety of employment uses that include the Maple Leaf food processing plant and the Canada Bread food processing plant. Maple Leaf and Canada Bread are concerned about possible adverse impacts and effects arising from the addition of a hazardous waste stream in the same Business Park where two sensitive food processing plants are also located.

[15] Development and intensification produce waste. Matters of provincial interest, as set in s. 2 of the Act, include the orderly development of safe and healthy communities, the adequate provision of employment opportunities, the minimization of waste and the

adequate provision of waste management systems.

[16] The 2014 Provincial Policy Statement (“PPS”) reinforces these matters of provincial interest and the need to ensure that different land uses are appropriately designed and located to ensure compatibility and avoid adverse effects.

[17] The Growth Plan for the Greater Golden Horseshoe (“GGH”) reflects these same matters in its policies and requirements.

[18] The UHOP includes policies for waste processing facilities, waste transfer facilities and hazardous waste management facilities.

[19] The settlement modifies the site-specific UHOPA and the site-specific ZBLA to add various restrictions to ensure that the Maple Leaf and Canada Bread plants are protected appropriately from any adverse impact arising from the Lockwood addition of a hazardous waste stream to its waste transfer facility.

[20] The modified UHOPA is found at Attachment 1 to this decision.

[21] The amended ZBLA is found at Attachment 2 to this decision.

[22] The Board finds that the UHOPA, as modified and found at Attachment 1 to this decision, has had regard for matters of provincial interest as set out in s. 2 of the Act, is consistent with the PPS, conforms to the GGH and conforms to the policy regime of the UHOP.

[23] The Board finds that the ZBLA, as revised and found at Attachment 2 to this decision, has had regard for matters of provincial interest as set out in s. 2 of the Act, is consistent with the PPS, conforms to the GGH and conforms to the UHOP as modified by the UHOPA found at Attachment 1 to this decision.

[24] The Minutes of Settlement (“MOS”) were filed as Exhibit 2 in these proceedings. In addition to restrictions that have been included in the revised UHOPA and ZBLA, the MOS set out several other requirements, including matters that must be met by Lockwood.

[25] The parties have asked jointly that the Board’s Order with regard to the UHOPA and the ZBLA be withheld in accordance with paragraph 5 of the MOS, specifically until the Board is advised by the parties in writing that:

- (a) Site Plan Application SPA-11-059 has been amended in accordance with paragraph 13 of these Minutes, and the City has advised the Parties and the Board in writing that all of the conditions of SPA-11-059, as amended, have been fulfilled to the satisfaction of the City;
- (b) the Restrictive Covenant set out in Schedule C or in a form accepted by the local land registrar has been registered against title of the Subject Property in accordance with paragraph 18 of these Minutes;
- (c) Lockwood Auto and Lockwood Capital have secured the New Environmental Compliance Approvals to replace the MOE Certificate of Approval in accordance with paragraph 10 of these Minutes and have provided the Parties with proof of such New Environmental Compliance Approvals.

[26] Paragraph 13 requires Lockwood to seek an amendment to its site plan that would include the construction of an additional berm, to the satisfaction of the City, and that this additional berm would be an additional condition of site plan approval.

[27] Schedule C is a restrictive covenant on the use of the Lockwood site.

[28] Paragraph 10 sets out the agreed upon requirements for new Environmental Compliance Approvals from the Ministry of Environment and Climate Change.

[29] Section 2.1 of the Act requires the Board to have regard to the decisions of Council and to the supporting materials before Council.

[30] The Board observes that the City has signed the MOS and now appears in these proceedings in support of the modified and revised planning instruments.

ORDER

[31] The Board orders that the appeal by Nebo Group (2006), now the Lockwood Auto Group Inc., of a proposed official plan amendment with the approval authority file number ROPA-12-001 is dismissed.

[32] The Board's order allowing in part the appeals by Nebo Group (2006), now the Lockwood Auto Group Inc.:

1. of its proposed amendment to the City of Hamilton Urban Hamilton Official Plan, as further modified by Attachment 1 to this decision, and
2. of its proposed amendment to the City of Hamilton By-law No. 05-200, as further amended by Attachment 2 to this decision,

is withheld until the Board is advised in writing that the matters set out in paragraph 5 of the Minutes of Settlement, filed as Exhibit 2 in these proceedings, have been met.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

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

A constituent tribunal of Environment and Land Tribunals Ontario
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ATTACHMENT 1

Urban Hamilton Official Plan Amendment No. 151

The following text, together with Appendix "A" – Urban Hamilton Official Plan - Volume 3 - Map 2 – Urban Site Specific Key Map, attached hereto, constitutes Official Plan Amendment No. 151 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this amendment is to create a site specific policy to permit a small scale Hazardous Waste Transfer Facility within a building, as an additional permitted use on the subject property, subject to Environmental Compliance Approvals issued by the Ministry of the Environment.

The new Hazardous Waste Transfer Facility shall be permitted to operate only on the same property with an approved Waste Processing Facility and a Waste Transfer Facility that are existing legal uses and subject to various Environmental Compliance Approvals (Certificates of Approval) issued by the Ministry of the Environment.

2.0 Location:

The lands affected by this Amendment are known municipally as 899 Nebo Road ("the subject property") in the City of Hamilton.

3.0 Basis:

The basis for the amendment is as follows:

- The proposal represents an expansion to an existing Waste Processing Facility and Waste Transfer Facility that are currently regulated by the Ministry of the Environment;
- The proposed new Hazardous Waste Transfer Facility is subject to additional review by the Ministry of the Environment and the issuance of a new Environmental Compliance Approval;
- A Hazardous Waste Processing Facility is prohibited on the subject land;

- As an expansion to existing approved Waste Processing Facility and Waste Transfer Facility uses, the new use is consistent with the Provincial Policy Statement 2014, and conforms to and implements the Growth Plan for the Greater Golden Horseshoe;

4.0 Actual Changes:

4.1 Text Changes:

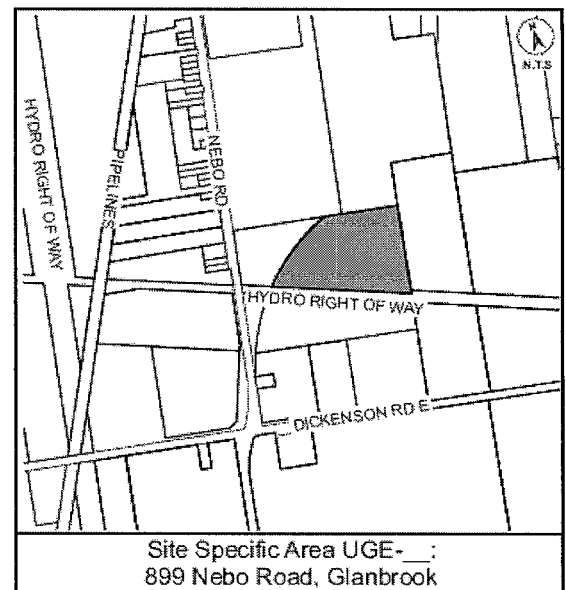
Volume 3 – Special Policy / Site Specific

4.1.1 Urban Hamilton Official Plan Volume 3, Chapter C, Glanbrook Urban Site Specific Areas is amended by:

a) Adding a new Site Specific Area – UGE-__ to read as follows:

“UGE-__ Lands located at 899 Nebo Road, former Township of Glanbrook

1.0 In addition to the uses permitted in Policy E.5.4.3 – Employment Area – Business Park of Volume 1, on the lands designated Employment Area – Business Park located at 899 Nebo Road, a small scale Hazardous Waste Transfer Facility within an enclosed building, devoted to the temporary storage of hazardous waste, may also be permitted. The new Hazardous Waste Transfer Facility will be permitted to operate only on the same property with an approved Waste Processing Facility and Waste Transfer Facility.



1.1 A Hazardous Waste Processing Facility shall be prohibited.”

4.2 Mapping Changes:

4.2.1 Volume 3 - Map 2 – Urban Site Specific Key Map is amended by identifying the property located at 899 Nebo Road (Glanbrook) as “UGE-
_,” as shown on Appendix “A”, attached.

5.0 Implementation:

An implementing Zoning By-law Amendment will give effect to the intended use on the subject property.

This is Schedule “1” to By-law No. 15-^{303-OMB-01}____, passed on the ^{15th}____ day of September, 2015.

The City of Hamilton

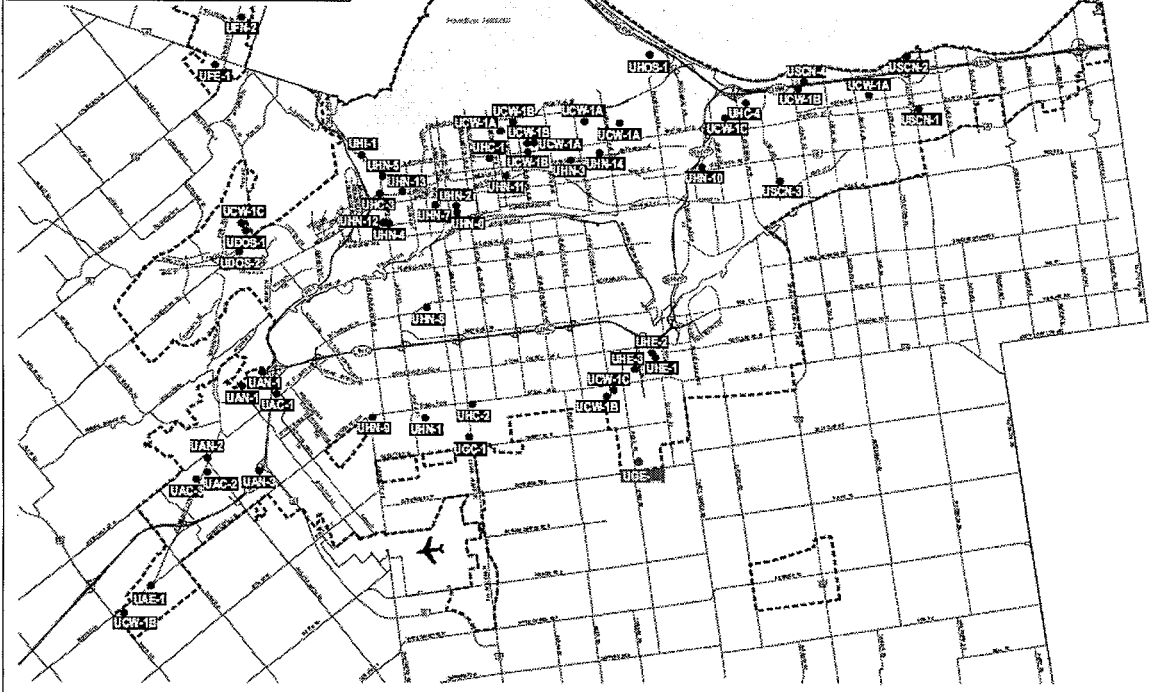
Fred Eisenberger
Mayor

Rose Caterini
Clerk

Appendix A
 DRAFT Amendment No. _____
 to the Urban Hamilton Official Plan

● Lands to be identified as Site Specific Area USE - ...
 (899 Nebo Road)

Date: Jul. 30, 2015	Revised By: PTNS	Reference File No.: OPN-42-2015-03
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APPEAL

The southern urban boundary that generally extends from Upper Dundas Street and Mud Street East to the east, following the hydro corridor and encompassing the Red Hill Business Park to Upper James Street remains under appeal - see distribution on Schedules F and H-1, Volume 3.

Legend

- Site Specific Area USE
- Urban Specific Use (USE) - ...

Other Features

- Public Ave
- John C. Munro Municipal International Airport
- Neighbourhood
- Urban Boundary
- Municipal Boundary

LANDS ADDED: July 31, 2015
 PREVIOUS AMENDMENTS: March 10, 2015
 APPROVED: August 16, 2015

Urban Hamilton Official Plan
 Volume 3: Map 2
 Urban Site Specific Map

City of Hamilton
 Planning Department

ATTACHMENT 2

CITY OF HAMILTON

BY-LAW No. 15-304-OMB-01

To Amend Zoning By-law No. 05-200

Respecting Lands Located at 899 Nebo Road (Glanbrook)

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 No. 05-200;

AND WHEREAS Zoning By-law 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Council of the City of Hamilton, in adopting Item No. ____ of Report 15-____ of the Planning Committee, at its meeting held on the ____ day of _____, 2015, recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan upon approval of Official Plan Amendment No. 151;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Map Nos. 1634, 1676, and 1677 of Schedule "A" – Zoning Maps, of Zoning By-law No. 05-200, be amended by changing the zoning from the Prestige Business Park (M3, 354, 441) Zone to the Prestige Business Park (M3, 354, 441, 471, H61) Holding Zone, Modified, for the lands, the extent and boundaries of which are shown on Schedule "A" annexed hereto and forming part of this By-law.
2. That Section 'C' – Special Exceptions of Zoning By-law 05-200 is hereby amended by adding an additional special exception as follows:

"471. In addition to Section 9.3, and Exceptions 354 and 441 of Schedule 'C' of this By-law, within the lands zoned Prestige Business Park (M3, 354, 441, 471, H61) Zone, Modified, identified on Maps 1634, 1676 and 1677 of Schedule "A" – Zoning Maps and described as 899 Nebo Road, the following special provisions shall apply:

a) **PERMITTED USES**

In addition to Subsection 9.3.1 Permitted Uses and Exceptions 354 and 441 of Schedule 'C', a Hazardous Waste Transfer Facility on the same property with an existing Waste

Processing Facility and Waste Transfer Facility shall also be permitted.

b) PROHIBITED USES

In addition to Subsection 9.3.2 Prohibited Uses, a Hazardous Waste Processing Facility shall also be prohibited.

c) REGULATIONS

i) Location Restriction of Hazardous Waste Transfer Facility

Shall only be permitted within an enclosed building with a maximum setback of 60 m from the rear lot line.

ii) Size Restriction of Hazardous Waste Transfer Facility

The maximum gross floor area for a Hazardous Waste Transfer Facility shall be 900 square metres, within which a maximum of 49 square metres containing a maximum 9 cells shall be devoted to the temporary storage of hazardous wastes.

3. That Schedule "D" – Holding Provisions, of By-law No. 05-200 be amended by adding an additional Holding Provision as follows:

"61. That notwithstanding Section 9.3 of this By-law, on those lands zoned Prestige Business Park (M3, 354, 441, 471) Zone, on Maps 1634, 1676 and 1677 of Schedule "A", a Hazardous Waste Transfer Facility shall not be permitted until such time as:

i. The owner/operator shall complete all of the site works as indicated on the approved site plans SPA-10-034 AND SPA-11-059 having conditions of approval dated June 9, 2010 and June 2, 2011 respectively, all to the satisfaction of the Manager of Development Planning, Heritage and Design;

ii. The owner/operator shall be in full compliance with the Ontario Building Code and the Ontario Fire Code including Part 4 and Subsections 3.3.2 to address indoor general storage, storage and handling of flammable and combustible liquids, spill control procedures, sprinkler protection and the approved fire safety plan to

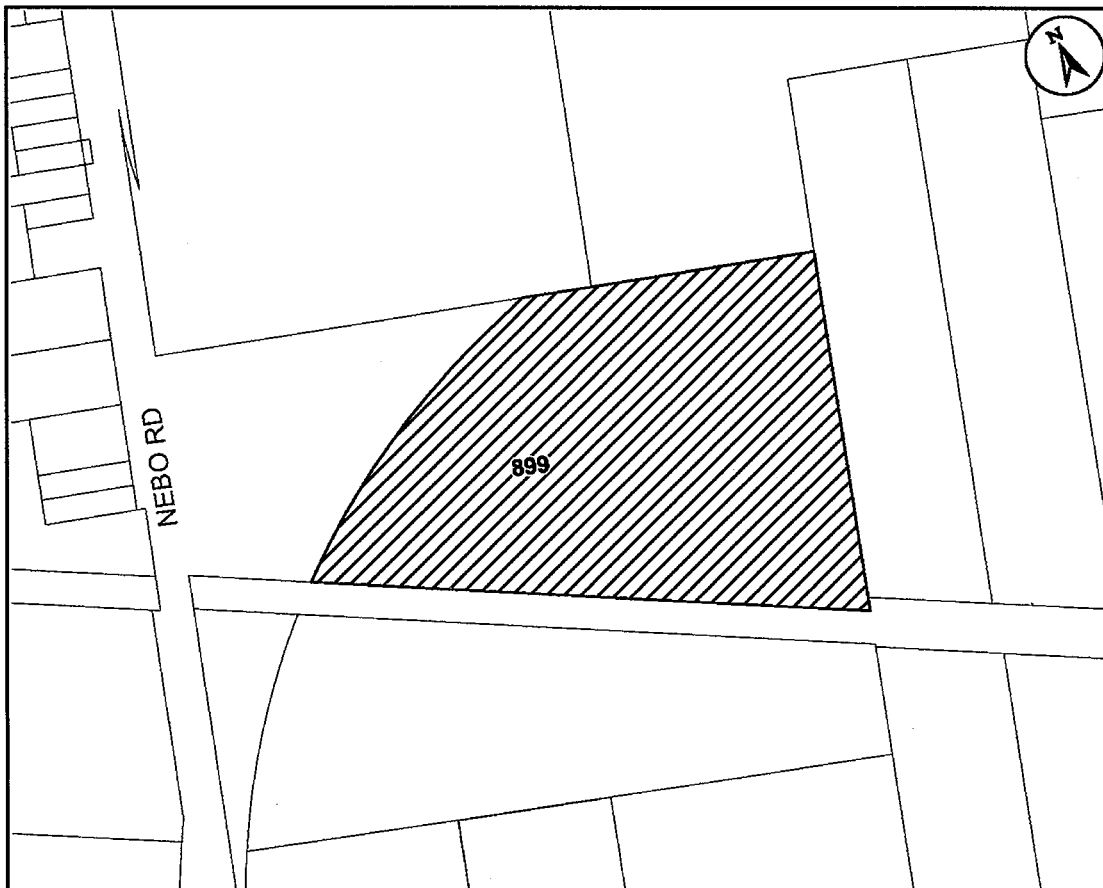
the satisfaction of the Hamilton Fire Department. A letter signed by a Professional Engineer indicating compliance with Part 4 and Subsections 3.3.2 of the OFC shall be forwarded to the Hamilton Fire Department;

- iii. The owner/operator shall provide a water supply calculation to the satisfaction of the Director, Hamilton Water;
 - iv. The owner/operator shall provide an Emergency Management Plan to the satisfaction of the Hamilton Fire Department and City's Public Works Department;
 - v. The owner/operator shall receive approval of a Site Plan Amendment application to amend Site Plan SPA-11-059, in order to provide an additional landscape berm along the north property line, which will extend from the limits of the existing berm to the rear property line, with appropriate landscaping, to the satisfaction of the Manager of Development Planning, Heritage and Design.
4. 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*.
5. That this By-law No. ^{15-304-OMB-01} ___ shall come into force and be deemed to come into force in accordance with Sub-section 34(21) of the *Planning Act*, either upon the date of passage of this By-law or as otherwise provided by the said Sub-section.

PASSED and ENACTED this 15th day of Septmeber, 2015.

Fred Eisenberger
Mayor

Rose Caterini
Clerk



This is Schedule "A" to By-Law No. 15-

Passed the day of, 2015

 Mayor


 Clerk

Schedule "A"

Map Forming Part of
 By-law No. 15-_____

to Amend By-law No. 464

Subject Property
 899 Nebo Road

 Change in Zoning from the Prestige Business Park (M3, 354, 441) Zone to the Prestige Business Park (M3, 354, 441, 471, H61) Zone

Scale: N.T.S.	File Name/Number: ZAR-12-071/ROPA-12-001
Date: July 30, 2015	Planner/Technician: HT/VVS
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

