

August 10, 2015

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File 01207.00058

Clerk, City of Hamilton  
Hamilton City Hall  
71 Main Street West  
Hamilton ON L8P 4Y5

Dear Sirs/Mesdames:

**Re: City of Hamilton By-law 15-172  
(Official Plan Amendment No. 9 to  
the Rural Hamilton Official Plan)**

We are the solicitors for St. Mary's Cement Inc. (Canada), and its various related companies. Our client is the owner of approximately 530 acres of land, located north and west of Concession 11, and west of the Milborough Town Road, in what was the Township of Flamborough. Attached as schedule "A" is a sketch showing the location of our client's property in a more detailed way. The legal description of our client's property is set out in schedule "B".

Our client's property is affected by a Ministerial Zoning Order (O.Reg. 138/10), enacted under section 47 of the *Planning Act*. By virtue of a Deeming Order (O.Reg. 100/13), this Ministerial Zoning Order is deemed to be a by-law passed under section 34 of the *Planning Act* by the City of Hamilton. The MZO and the Deeming Order are still in effect. Copies of these orders are enclosed with this letter.

Our client's property is also affected by a Conservation Easement, which sets out detailed restrictions aimed at conserving all of a portion of the lands for the purposes described therein. A copy of this Conservation Easement, as registered, is also included with this letter.

Our client's principal interest is to ensure that the Official Plan policies and zoning provisions recently enacted by the City of Hamilton are consistent with the MZO and the Conservation Easement's restrictions, both in terms of their geographic application and in terms of the land use policies and zoning provisions. For obvious reasons, our client wishes to ensure that there is a consistency between all of the land use instruments that affect its lands.

On June 25, 2015, our client met with the City, including Councillor Partridge and Michael Kovacevic along with Graham Flint, of FORCE, to discuss these issues, and provide input into the City's proposed Official Plan policies and zoning regulations. Based on those discussions, it was our client's expectation that the City would defer the enactment of these policies and regulations as they may apply to our client's lands, to give these discussions a better opportunity of enacting consensus.

Unfortunately, that did not happen. On July 10, 2015, the City enacted By-law No. 15-172, adopting and approving OPA No. 9 to the Rural Hamilton Official Plan, and By-law 15-173 to effect amendments to By-law No. 05-200.

Our client is still in the process of reviewing OPA No. 9, and By-law No. 15-173, to determine whether they are in fact consistent with the MZO and the Conservation Easement. It has concerns that they may not be, both in terms of their geographic extent, and in terms of the restrictions that they impose on our client's lands.

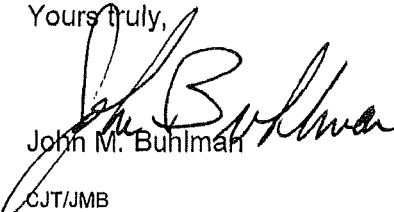
Our client does not believe that it makes sense to have inconsistent planning documents affecting its lands. This would not, in its opinion, constitute "good planning".

To afford our client a better opportunity review the City's planning instruments, our client hereby appeals the City's enactment of By-law No. 15-172 and its adoption of OPA No. 9, pursuant to section 17 of the *Planning Act*.

Enclosed, in addition to the documents referred to earlier, is our client's completed Form A1 and a cheque in the amount of \$125.00, made payable to the Minister of Finance.

We look forward to your acknowledgement of the receipt of this appeal, and to working with the City to (hopefully) resolve any possible issues and concerns that our client may uncover.

Yours truly,

  
John M. Buhlman

CJT/JMB  
Enclosure



Environment and Land Tribunals Ontario  
**Ontario Municipal Board**  
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5  
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248  
 FAX: (416) 326-5370  
 www.elto.gov.on.ca

**APPELLANT FORM (A1)  
 PLANNING ACT**

**SUBMIT COMPLETED FORM  
 TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

**OFFICE OF THE CITY CLERK**

**AUG 10 2015**

Receipt Number (OMB Office Use Only)

**Part 1: Appeal Type (Please check only one box)**

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input checked="" type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

**Part 2: Location Information**

353 11<sup>th</sup> Concession Road East, and other lands, as per Schedule "B" of the letter of August 10, 2015 (the "subject property")  
 Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: City of Hamilton

**Part 3: Appellant Information**

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

St. Mary's Cement Inc. (Canada)  
Company Name or Association Name (Association must be incorporated – Include copy of letter of incorporation)

Professional Title (if applicable): \_\_\_\_\_

E-mail Address: \_\_\_\_\_  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: \_\_\_\_\_ Alternate Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street Address Apt/Suite/Unit# City/Town

Province Country (if not Canada) Postal Code

Signature of Appellant: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature not required if the appeal is submitted by a law office.)

**Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.**

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

**Part 4: Representative Information (if applicable)**

**I hereby authorize the named company and/or individual(s) to represent me:**

First Name: John Buhlman or Chris Tzekas

Company Name: WeirFoulds LLP

Professional Title: Barristers and Solicitors

E-mail Address: jbuhlman@weirfoulds.com or ctzekas@weirfoulds.com  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416.947.5070 or 416.947.5039 Alternate Telephone #: 416.365.1110

Fax #: 416.365.1876

Mailing Address: 66 Wellington Street West Suite 4100 Toronto  
Street Address Apt/Suite/Unit# City/Town

Ontario M5K 1B7  
Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: August 10, 2015

**Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.**

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

**Part 5: Language and Accessibility**

Please choose preferred language:  English  French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

**Part 6: Appeal Specific Information**

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)  
By-law No. 15-172, enacted July 10, 2015, to adopt and approve Official Plan Amendment No. 9 to the Rural Hamilton Official Plan, as it relates to the subject property.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). \*\*If more space is required, please continue in Part 9 or attach a separate page.

(Please print)  
As per the letter dated August 10, 2015, from WeirFoulds, LLP.

**THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.**

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: \_\_\_\_\_  
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:  
\*\*If more space is required, please continue in Part 9 or attach a separate page.

**Part 7: Related Matters (if known)**

Are there other appeals not yet filed with the Municipality? YES  NO

Are there other planning matters related to this appeal? YES  NO   
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)  
Related appeal of By-law No. 15-173, enacted July 10, 2015, to amend Zoning By-law No. 05-200 as it related to the subject property.

**Part 8: Scheduling Information**

How many days do you estimate are needed for hearing this appeal?  half day  1 day  2 days  3 days  
 4 days  1 week  More than 1 week – please specify number of days: \_\_\_\_\_

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?  
 One. \_\_\_\_\_

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):  
 Land Use Planner + St. Mary's representative. \_\_\_\_\_

Do you believe this matter would benefit from mediation? YES  NO   
 (Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES  NO   
 (Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? It is everyone's intent to ensure that a consistent planning framework is established for the subject property.

**Part 9: Other Applicable Information \*\*Attach a separate page if more space is required.**


**Part 10: Required Fee**

Total Fee Submitted: \$ 125.00

Payment Method:  Certified cheque  Money Order  Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.