Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

14-314
Attachment 1

ISSUE DATE: September 12, 2014     CASE NO(S).: PL140597

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

Appellant: Calloway Real Estate Investments Trust Inc.
Subject: Proposed Official Plan Amendment No. OPA-13-012
Municipality: City of Hamilton
OMB Case No.: PL140597
OMB File No.: PL140597

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

Motion By: Joel Farber
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Calloway Real Estate Investments Trust Inc.
Subject: Proposed Official Plan Amendment No. OPA-13-012
Municipality: City of Hamilton
OMB Case No.: PL140597
OMB File No.: PL140597, PL140598

Heard: September 3, 2014 in Hamilton, Ontario

APPEARANCES:

Parties                      Counsel
Calloway Real Estate Investments Trust Inc.   Johanna Shapira
Trinity Development Group Inc.   Joel Farber
City of Hamilton               Steven Zakem
MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON SEPTEMBER 3, 2014 AND ORDER OF THE BOARD

[1] Calloway Real Estate Investments Inc. ("Calloway") appealed a decision made by the City of Hamilton ("City") to approve an official plan amendment and zoning by-law amendment. The Applicant, Trinity Development Group Inc., brought a motion to dismiss the appeal without the necessity of holding a hearing. At the outset of the motion hearing, counsel advised that all issues were resolved and a request was made to modify the official plan amendment under appeal, following which the appeal to the zoning by-law amendment would be withdrawn. On this basis, the motion to dismiss the appeal was withdrawn.

[2] Matthew Johnston, a land use planner qualified to give opinion evidence, testified in support of the approval of Official Plan Amendment No. 18 ("OPA 18"), as modified by agreement between Calloway, the Applicant and the City. By way of background, the Applicant received approval (OPA 18) from City Council on May 14, 2014 to proceed with its development application for lands located on Wilson Street West in the former Town of Ancaster. OPA 18 was appealed by Calloway. The development proposal, described in detail in the affidavit of Mr. Johnston, seeks approvals to facilitate commercial development, including a supermarket and other district commercial uses. Specifically, the application proposes re-designations from arterial commercial to district commercial, with maximum gross floor areas. The purpose of OPA 18 is to allow for a range of commercial uses on the subject lands and the modifications are intended to add a greater level of precision to the policies both in terms of the maximum square metres of permitted space and associated uses as well as clarifying the prohibited uses. It was Mr. Johnston’s evidence that the changes introduced achieve these objectives.

[3] The modifications proposed (as set out in Exhibit 4, a black line version of the instrument) are intended to provide clarification as to the purpose of OPA 18, which is an amendment to the Urban Hamilton Official Plan. Modifications agreed to between the parties include both mapping changes (s. 4.1) and changes to the text (s. 4.2). It was
the opinion of Mr. Johnston that OPA 18, as modified, conforms to all applicable provincial plans, is consistent with the Provincial Policy Statement and represents an appropriate balance of interest as between Calloway and the Applicant. The City supports the modifications to OPA 18 and submitted they be adopted.

[4] The appeal is allowed in part. OPA 18 is modified in the manner set out in Attachment 1 (Exhibit 5) and as modified, is approved. The appeal by Calloway of the former Town of Ancaster By-law No. 87-57 is withdrawn and the Board's file will be closed. By agreement of counsel, the motion to dismiss the appeal is withdrawn, without costs.

“J. de P. Seaborn”

J. de P. SEABORN
VICE CHAIR

Ontario Municipal Board
A constituent tribunal of Environment and Land Tribunals Ontario.
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248
Amendment No. 18 to the Urban Hamilton Official Plan

The following text constitutes Official Plan Amendment No. 18 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose of this Amendment is to amend Schedule E-1 - Urban Land Use Designations of the Hamilton Urban Official Plan by redesignating a portion of the lands from "Arterial Commercial" to "District Commercial"; to amend Volume 3: Map 1 and Map A-2 to identify two portions of the lands as being within an Area Specific Policy; and, to establish the text of the Area Specific Policy, all to allow for a range of commercial uses on the subject lands.

2.0 Location:

The properties affected by this Amendment are located at 1125, 1143 and 1185 Wilson Street West, within the City of Hamilton (former Town of Ancaster).

3.0 Basis:

The basis for permitting these Amendments is as follows; the Amendments:

- Provide for an alteration in the type of commercial uses currently permitted to allow for a greater range of daily and weekly shopping opportunities for area residents;

- Continues to provide for Arterial Commercial uses on a large portion of the subject lands;

- Provides needed retail opportunities that will not negatively impact existing retail uses in the surrounding area.

4.0 Changes:

4.1 Mapping Changes:

4.1.1 Schedule E-1 - Urban Land Use Designations is amended by redesignating a portion of the lands from "Arterial Commercial" to "District Commercial", as shown on Appendix "A", attached.
4.1.2 Volume 3: Map 1 - Area Specific Policies Key Map is amended by identifying Area Specific Policy UA-5 on the subject lands.

4.1.3 Volume 3: Map A-2 - Area Specific Policies is amended by identifying Area Specific Policy UA-SA and UA-SB on the subject lands.

4.2 Text Changes:

4.2.1 Volume 3: Chapter B - Ancaster Area Specific Policies is amended by:

a) Adding the new Area Specific Subsection UA-5 to read as follows:

"UA-5A Lands Located north of Wilson Street West and north of Portia Drive (Area A)

1.0 A maximum of 10,525 square metres of commercial uses are permitted, inclusive of the district commercial uses referenced in subsection 1.1 hereto.

1.1 Notwithstanding the uses permitted in Policy E.4.8.2 – Arterial Commercial of Volume 1, a maximum of 2,807 square metres of district commercial uses in accordance with Policy E.4.7.2 shall be permitted, subject to the prohibitions in Policy E.4.7.3.

1.2 For greater certainty, a department store shall be prohibited.

UA-5B Lands Located north of Wilson Street West and south of Portia Drive (Area B)

2.0 Notwithstanding Policy E.4.7.7 a maximum of 13,000 square metres of district commercial uses are permitted, of which, a maximum of 4,725 square metres shall be a supermarket with the remaining 8,275 square metres permitted to be other district commercial uses.

2.1 Notwithstanding Policy E.4.7.2(b), offices are permitted on the ground floor."
2.2 Notwithstanding the uses permitted in Policy E.4.7.2 - District Commercial of Volume 1, a department store shall be prohibited.

6.0 Implementation:

An Implementing Zoning By-law Amendment will give effect to this Amendment.

This Is Schedule "1" to By-law No. 14-111 passed on the 1st day of May, 2014.

The
City of Hamilton

[Signatures]

Mayor

City Clerk
Appendix C
Amendment No. 18
to the Urban Hamilton Official Plan

Lands to be Identified as Area Specific Policy
UA-5
(1125, 1143 and 1195 Wilson Street West)

Date: April 2014
Revised By: GM/NB
Reference File No.: OPA-U-18(A)

Legend

UA-4 (existing)

UA-5

Legend

UA-4 (existing)

UA-5